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# federal register

Tuesday
June 28, 1994



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# federal register

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# Contents

Federal Register
Vol. 59, No. 123
Tuesday, June 28, 1994

**Separate Parts In This Issue**



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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

# Rules and Regulations

Federal Register
Vol. 59, No. 123
Tuesday, June 28, 1994



## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1610

### Standard for the Flammability of Clothing Textiles; Amendment to Remove Footnotes

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending the Standard for the Flammability of Clothing Textiles by removing two footnotes which identify a particular firm as the source for two items of test equipment specified in the standard. The Commission has learned that the firm named in the footnote is not the only source of the equipment used to determine if fabrics and garments comply with the clothing textiles flammability standard. For this reason, the Commission has decided to remove the footnotes.

**EFFECTIVE DATE:** This amendment is effective on June 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980.

**SUPPLEMENTARY INFORMATION:** The Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) is applicable to clothing and to textile fabrics intended for use in clothing. This standard prescribes a test to determine whether clothing and fabrics intended for use in clothing are dangerously flammable because of "rapid and intense burning."

#### A. Origin of the Standard

The clothing textiles flammability standard was first published by the Department of Commerce in 1953 as a voluntary commercial standard designated "Flammability of Clothing Textiles, Commercial Standard (CS) 191–53." In the same year, Congress enacted the Flammable Fabrics Act of 1953 (Pub. L. 83–88, 67 Stat. 111). As enacted in 1953, and amended in 1954, the Flammable Fabrics Act of 1953 prohibits the importation, manufacture for sale, or the sale in commerce of any article of wearing apparel, or any fabric used or intended for use in wearing apparel, which is "so highly flammable as to be dangerous when worn by individuals." The Flammable Fabrics Act of 1953 specifies that the test in CS 191–53 shall be used to determine if a fabric or article of wearing apparel is "so highly flammable as to be dangerous when worn by individuals." The Flammable Fabrics Act of 1953 placed enforcement authority with the Federal Trade Commission.

In 1967, Congress amended the Flammable Fabrics Act to expand its coverage to include products of interior furnishing and wearing apparel made from fabric or related material, and fabric or related material used or intended for use in products of interior furnishing and wearing apparel. The 1967 amendment authorized the Secretary of Commerce to issue flammability standards by rulemaking proceedings. Enforcement responsibility remained with the Federal Trade Commission. The Flammable Fabrics Act, as amended in 1967, is codified at 15 U.S.C. 1191 through 1204. An uncodified savings clause in the 1967 amendment continued the flammability standard for clothing textiles mandated by the Flammable Fabrics Act of 1953 in effect until such time as it is amended or superseded in accordance with the procedures specified by the 1967 amendment. See section 11 of Pub. L. 90–189, 81 Stat. 568, December 14, 1967.

In 1972, Congress enacted the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*), which established the Consumer Product Safety Commission. The CPSA also transferred to the Commission the authority formerly held by the Secretary of Commerce to issue and amend flammability standards, and the authority formerly held by the Federal Trade Commission to enforce flammability standards. See 15 U.S.C. 2079(b).

In 1975, the Commission codified the Flammable Fabrics Act of 1953 at 16 CFR Part 1609, and the Standard for the Flammability of Clothing Textiles at 16 CFR Part 1610. See 40 FR 59931 (December 30, 1975). The Commission's codification of the flammability standard for clothing textiles included all of the footnotes contained in Commercial Standard 191–53, as published by the Department of Commerce.

#### B. Firm Named in Footnotes

Section 4.2 of CS 191–53 describes an item of test apparatus called the "flammability tester" in the following language:

*Flammability tester.*[3] The Flammability Tester consists of a draft-proof ventilated chamber enclosing a standard ignition medium, sample rack, and automatic timing device.

* * * * *

[3] This apparatus is manufactured by the United States Testing Co., 1415 Park Avenue, Hoboken, N.J. Blue prints of working plans for the manufacture of this apparatus are available, at a nominal charge, from the above-named firm.

Section 4.3 of CS 191–53 described an item of equipment called a "brushing device." A footnote to section 4.3 states:

[5] This device is manufactured by the United States Testing Co., 1415 Park Avenue, Hoboken, N.J.

These provisions, including the footnotes, are codified at 16 CFR 1610.4(b) and 1610.4(c)(1).

The Commission has received information that similar items of equipment are presently available from several sources. When CS 191–53 was first published, a need may have existed to name a specific firm as the source for particular items of test equipment specified by the standard. However, because more than one firm now supplies the test equipment, that need no longer exists.

Additionally, naming a single firm as the manufacturer or supplier of an item of equipment which is available from other sources may be unfair to those firms not identified in the footnotes. The Commission has considered the possibility that the footnotes could be revised to include the names of additional firms which make or sell those items of test equipment. However, that approach could require periodic revision of the standard to assure that the footnote lists all current sources for the flammability tester and brushing

device. Rather than list all sources of those items, the Commission has decided to amend the Standard for the Flammability of Clothing Textiles by removing footnotes 3 and 5.

### C. Rulemaking Procedures

Generally, the Administrative Procedure Act (5 U.S.C. 553) requires that agencies must give notice of proposed rulemaking and provide opportunity for interested parties to submit written comments on the proposal before a rule can be issued or amended. However, 5 U.S.C. 553(b)(B) provides that notice of proposed rulemaking and public participation are not required when the agency makes a finding for good cause that such notice and opportunity for comment are "impracticable, unnecessary, or contrary to the public interest."

The Commission finds for good cause that notice of proposed rulemaking and opportunity for written comment are not necessary for issuance of the amendment to delete footnotes 3 and 5 from the clothing textiles flammability standard because that amendment does not affect the rights or duties of any person or firm subject to the requirements of the standard. The amendment does not change the apparatus, procedure, or criteria used to determine if clothing and textiles intended for use in clothing are dangerously flammable because of rapid and intense burning. The only purpose of the amendment is to delete footnotes which identify a single firm as the source of two items of equipment used to conduct the test specified by the standard.

### D. Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, including small businesses. Section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis when the agency certifies that the rule will not, if issued, have a significant economic impact on a substantial number of small entities. In accordance with provisions of section 605(b) of the RFA, the Commission certifies that the amendments proposed below, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

As noted above, the amendment does not modify the equipment, test procedure, or pass/fail criteria of the clothing textiles flammability standard. The amendment will simply remove two footnotes naming one firm as the source for two items of test equipment. The amendment will not affect the availability of either item of test equipment or increase or decrease any cost for any firm which manufactures or sells any product subject to the clothing textiles flammability standard.

### E. Environmental Considerations

The proposed amendments fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. Because the proposed amendments, if issued on a final basis, will not change any aspect of the testing required by the standard, the proposed action does not have any potential to produce significant environmental effects. For that reason, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects in 16 CFR Part 1610

Consumer protection, Flammable materials, Records, Textiles, Warranties.

### Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and section 4 of the Flammable Fabrics Act (15 U.S.C. 1193), the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, Part 1610 to read as follows:

## PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

1. The authority for part 1610 continues to read as follows:

**Authority:** Sec. 5, Pub. L. 83–88, 67 Stat. 112, as amended, 68 Stat. 770 (15 U.S.C. 1193); sec. 11, Pub. L. 90–189, 81 Stat. 568.

2. Section 1610.4 is amended by revising paragraphs (b) introductory text and (c)(1) to read as follows:

**§ 1610.4 Methods of test.**

* * * * *

(b) *Flammability tester.* The flammability tester consists of a draft-proof ventilated chamber enclosing a standardized ignition medium, sample rack, and automatic timing device.

* * * * *

(c) *Brushing device.*[h] (1) This device consists of a baseboard over which a smaller carriage is drawn. This carriage runs on parallel tracks attached to the edges of the upper surface of the baseboard. The brush is hinged with pin hinges at the rear edge of the baseboard and rests on the carriage vertically with a pressure of 150 grams.

* * * * *

[h] See § 1610.61(c)(2) for a clarification of the brushing technique for fabric with raised-fiber surfaces.

Dated: June 21, 1994.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 94–15550 Filed 6–27–94; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 176

**[Docket No. 90F–0202]**

## Indirect Food Additives: Paper and Paperboard Components

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of siloxanes (silicones), dimethyl, isopropyl methyl, methyl 1-methyl-$C_{9-49}$-alkyl, as a modifier for polyolefin resins to be used as coatings for paper and paperboard. This action responds to a food additive petition filed by Chugai Boyeki (America) Corp.

**DATES:** Effective June 28, 1994; written objections and requests for a hearing by July 28, 1994.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of July 17, 1990 (55 FR 29105), FDA announced that a petition (FAP 9B4171) had been filed by Chugai Boyeki (America) Corp. ("Chugai" was inadvertently misspelled in the filing notice as "Chaugai"), 500 Fifth Ave., suite 1730, New York, NY 10110. The petition proposed to amend the food additive regulations to provide for the safe use of the addition product of ($C_{10}$–$C_{50}$) alkene and propylene to polymethyl hydrogensiloxane for use as a modifier and as an antifoaming agent for polyolefin resin coatings for paper and paperboard.

FDA has evaluated the data in the petition and other relevant material and concluded that the proposed use for the additive in paper and paperboard coatings is safe. However, based upon a complete review of the petition, the agency has determined that the appropriate technical effect of the additive is primarily as a polymer modifier, that effect is reflected in the listing regulation. The agency has further determined that the Chemical Abstracts Service nomenclature and registry number more accurately describe the additive than the description in the notice of filing, and therefore, the agency has used them in this rule. Under this nomenclature, the additive is denominated "Siloxanes (silicones), dimethyl, isopropyl methyl, methyl 1-methyl-$C_{9-49}$-alkyl." Accordingly, FDA concludes that the food additive regulations should be amended in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 28, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 176**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

## PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

**Authority:** Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding a new entry under the headings "List of Substances" and "Limitations" to read as follows:

**§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.**

* * * * *

(a) * * *

(5) * * *

| List of Substances | Limitations |
|---|---|
| * * * * * * * | |
| Siloxanes (silicones), dimethyl, isopropyl methyl, methyl 1-methyl-$C_{9-49}$-alkyl (CAS Reg. No. 144635–08–5). | For use only as a component of polyolefin coatings with § 177.1520 of this chapter at a level not to exceed 3 percent by weight. The finished coating will be used only for paper and paperboard that contact food of types VI–A and VI–B of Table 1 in paragraph (c) of this section, and under conditions of use C, D, and E, as described in Table 2 in paragraph (c) of this section, with a maximum hot fill temperature of 200 °F (94 °C). |
| * * * * * * * | |

* * * * *

Dated: June 21, 1994.

**L. Robert Lake,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 94–15667 Filed 6–27–94; 8:45 am]

BILLING CODE 4160–01–F

**21 CFR Part 178**

**[Docket No. 91F–0391]**

## Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *N*-phenylbenzenamine reaction products with 2,4,4-trimethylpentenes, as an antioxidant or stabilizer in pressure-sensitive adhesives intended for contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

**DATES:** Effective June 28, 1994; written objections and requests for a hearing by July 28, 1994.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–

305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of December 19, 1991 (56 FR 65906), FDA announced that a food additive petition (FAP 1B4286) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of *N*-phenylbenzenamine reaction products with 2,4,4-trimethylpentenes as an antioxidant and/or stabilizer in pressure-sensitive adhesives in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 28, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | | Limitations |
|---|---|---|
| * * * * * * * | | |
| *N*-Phenylbenzenamine reaction products with (CAS Reg. No. 68411–46–1). | 2,4,4-trimethylpentenes | For use at levels not to exceed 0.5 percent by weight of pressure-sensitive adhesives complying with § 175.125 of this chapter. |
| * * * * * * * | | |

Dated: June 21, 1994.

**L. Robert Lake,**

*Acting Director, Center for Food Safety and Applied Nutrition*

[FR Doc. 94–15671 Filed 6–27–94; 8:45 am]

BILLING CODE 4160–01–F

## 21 CFR Parts 510, 520, 524, and 558

## New Animal Drugs; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the correct drug labeler code for Hess & Clark, Inc. The agency codified an incorrect drug labeler code. This action corrects that error.

**EFFECTIVE DATE:** June 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Judy M. O'Haro, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** of February 3, 1981 (46 FR 10462), the animal drug regulations were amended to reflect a change of sponsor for certain NADA's from Hess & Clark, Division of Rhone-Poulenc, Inc., to Hess & Clark, Inc. This sponsor change necessitated a new entry in 21 CFR 510.600 for Hess & Clark, Inc. However, the February 3, 1981, final rule codified an incorrect drug labeler code for the firm. This document corrects that error.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling,

Reporting and recordkeeping requirements.

*21 CFR Part 520*

Animal drugs.

*21 CFR Part 524*

Animal drugs.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 524, and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) in the entry for "Hess & Clark, Inc.," by removing the drug labeler code "011801" and adding in its place "050749," and in the table in paragraph (c)(2) by removing the entry for "011801," and by numerically adding a new entry for "050749" to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 050749 | Hess & Clark, Inc., Seventh and Orange Sts., Ashland, OH 44805 |
| * * * * * | |

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 520.2325a [Amended]**

4. Section 520.2325a *Sulfaquinoxaline drinking water* is amended in paragraph (c) by removing "011801" and adding in its place "050749".

**§ 520.2325b [Amended]**

5. Section 520.2325b *Sulfaquinoxaline drench* is amended in paragraph (c) by removing "011801" and adding in its place "050749".

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

6. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 524.1580b [Amended]**

7. Section 524.1580b *Nitrofurazone ointment* is amended in paragraph (b) by removing "011801" and adding in its place "050749".

**§ 524.1580c [Amended]**

8. Section 524.1580c *Nitrofurazone soluble powder* is amended in paragraph (b) by removing "011801" and adding in its place "050749".

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

9. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

**§ 558.95 [Amended]**

10. Section 558.95 *Bambermycins* is amended in paragraphs (b)(1)(x)(*b*) and (b)(1)(xi)(*b*) by removing "011801" and adding in its place "050749".

**§ 558.311 [Amended]**

11. Section 558.311 *Lasalocid* is amended in the table in paragraph (e)(1), in entry (ii), in the "Limitations" column for the combinations with "Roxarsone 45.4," "Roxarsone 45.4 plus bambermycins 1," "Roxarsone 45.4 plus lincomycin 2.0," "Roxarsone 45.4 plus bacitracin 10 to 25," and "Roxarsone 45.4 plus bacitracin 10 or 30," by removing "011801" and adding in its place "050749".

**§ 558.355 [Amended]**

12. Section 558.355 *Monensin* is amended in paragraphs (f)(1)(xii)(*b*) and (f)(1)(xx)(*b*) by removing "011801" and adding in its place "050749".

**§ 558.550 [Amended]**

13. Section 558.550 *Salinomycin* is amended in paragraph (b)(1)(ii)(*c*) by removing "011801" and adding in its place "050749".

**§ 558.586 [Amended]**

14. Section 558.586 *Sulfaquinoxoline* is amended in paragraph (a) by removing "011801" and adding in its place "050749".

Dated: June 21, 1994.

**George A. Mitchell,**

*Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.*

[FR Doc. 94–15602 Filed 6–27–94; 8:45 am]

BILLING CODE 4160–01–F

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## 21 CFR Parts 510 and 522

## Animal Drugs, Feeds, and Related Products; Change of Sponsor

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address for a new animal drug application (NADA) from Med-Chem Products, Inc. to Anika Research, Inc.

**EFFECTIVE DATE:** June 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

**SUPPLEMENTARY INFORMATION:** Med-Chem Products, Inc., Woburn, MA 01801, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA 122–578 for Hyaluronate sodium injection to Anika Research, Inc., 160 New Boston St., Woburn, MA 01801. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by removing Med-Chem Products, Inc., because the firm is no longer the sponsor of any approved NADA's, and by alphabetically adding a new listing for Anika Research, Inc.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 522*

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Med-Chem Products, Inc." and by alphabetically adding a new entry for "Anika Research, Inc.," and in the table in paragraph (c)(2) by removing the entry for "053276" and by numerically adding a new entry for "060865" to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |
| Anika Research, Inc., 160 New Boston St., Woburn, MA 01801 ..... | 060865 |
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 060865 | Anika Research, Inc., 160 New Boston St., Woburn, MA 01801 |

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 522.1145 [Amended]**

4. Section 522.1145 *Hyaluronate sodium injection* is amended in paragraph (a)(2) by removing the number "053276" and adding in its place "060865".

Dated: June 17, 1994.

**Robert C. Livingston,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 94–15604 Filed 6–27–94; 8:45 am]

BILLING CODE 4160–01–F

## 21 CFR Parts 520 and 558

## Animal Drugs, Feeds, and Related Products; Febantel-Trichlorfon Paste and Tylosin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations that reflect approval of two new animal drug applications (NADA's). One NADA is held by Miles, Inc., and provides for use of febantel-trichlorfon paste. The other NADA is held by Nutra-Blend Corp. and provides for manufacture of a Type A medicated article and Type B medicated feeds containing tylosin. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

**EFFECTIVE DATE:** July 8, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0749.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 131–412 for Combotel/Negabot-Plus (febantel-trichlorfon) Paste held by Miles, Inc., Agriculture Division, Animal Health Products, P.O. Box 390, Shawnee Mission, KS 66201, and NADA 122–158 held by Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850, for manufacture of Type B medicated feeds containing 4, 5, 10, and 20 grams per pound (g/lb) of tylosin and a Type A medicated article containing 40 g/lb of tylosin. The sponsors requested withdrawal of approval of the NADA's. This document removes 21 CFR 520.903c and amends 21 CFR 558.625(b)(71) to reflect the withdrawal of approval of these NADA's.

**List of Subjects**

*21 CFR Part 520*

Animal drugs.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 558 are amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 520.903c [Removed]**

2. Section 520.903c *Febantel-trichlorfon paste* is removed.

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

**§ 558.625 [Amended]**

4. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(71).

Dated: June 15, 1994.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine*

[FR Doc. 94–15673 Filed 6–27–94; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Part 55

**[Docket No. R–94–1436; FR–865–F–06]**

**RIN 2501–AA23**

## HUD Procedure for the Implementation of Executive Order 11988; Technical Amendment to Final Rule

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Technical amendment to final rule.

**SUMMARY:** HUD is adopting a technical amendment to its final rule containing procedures to implement Executive Order 11988 on floodplain management. The final rule requires that documents used in the conveyance of HUD-acquired properties in a floodplain must refer to uses restricted under Federal, state or local floodplain regulations and include any land use restrictions under state or local laws. The final rule also requires purchasers of HUD-acquired properties containing Critical Actions to notify tenants regarding floodplain hazards and flood insurance. The technical amendment restricts these requirements to the disposition of multifamily properties. HUD is also correcting an error in a cross-citation within the final rule.

**EFFECTIVE DATE:** May 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Broun, Director, Office of Environment and Energy, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW,

Washington, DC 20410. For telephone communications, contact Truman Goins, Water Resources Coordinator, Office of Environment and Energy, at (202) 708–2894, TDD (202) 708–2565.

**SUPPLEMENTARY INFORMATION:** HUD published 24 CFR part 55 as a final rule on April 21, 1994 (59 FR 19100), with an effective date of May 23, 1994. Part 55 contains procedures implementing Executive Order 11988, Floodplain Management (42 FR 26951, May 25, 1977).

Section 55.22(a) of the final rule requires that in the disposition (including leasing) of properties acquired by HUD that are located in a 100-year floodplain (a 500-year floodplain for a Critical Action), the documents used for the conveyance must: (1) Refer to those uses that are restricted under identified federal, state, or local floodplain regulations; and (2) include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.

Section 55.22(b) requires that for disposition of properties acquired by HUD that are located in a 500-year floodplain and contain Critical Actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property owner and successive owners provide written notification to each current and prospective tenant, and post an easily visible notice, concerning: (1) The hazards to life and property for persons who reside or work in a structure in the 500-year floodplain, and (2) the availability of flood insurance on the contents of their dwelling unit or business.

The requirements in § 55.22(a) were intended to implement Section 3(d) of Executive Order 11988, which applies to agencies with responsibilities for Federal real property and facilities. However, HUD annually disposes of approximately 65,000 to 70,000 one- to four-family properties acquired as the result of foreclosure or similar means, generally in connection with a homeowner's default under a mortgage that has been insured by HUD under the National Housing Act. HUD has determined that application of the requirements in § 55.22(a) to the disposition of these one- to four-family properties would be impractical and unnecessary. Application of the requirement to these properties is impractical because it would necessitate the research of Federal, state and local restrictions on thousands of properties to be disposed of within the floodplain each year. These restrictions may be located within building codes, zoning ordinances or other bodies of law, thus requiring a broad search of various laws and ordinances. The research needed to locate these provisions for each one- to four-family property would impose an unreasonable burden on HUD resources. In addition, the requirement is unnecessary, because the Federal, State and local laws and regulations are applicable and enforceable regardless of whether they are specifically mentioned in conveyance documents. The vast majority of such acquired properties will already contain an existing residential structure, so that any legal restrictions will generally apply only to additions to the structure or a change in use; in any case, the owner will generally need to obtain a building permit or other local government approval for any improvements or additions to the property.

Accordingly, HUD has determined to amend § 55.22(a) to apply these requirements only to the disposition of multifamily properties.

The requirements contained in § 55.22(b) with regard to notification of tenants in properties containing Critical Actions (such as hospitals, nursing homes, and other facilities that are likely to contain occupants with mobility difficulties) are not expected to be applied to one- to four-family properties, since it is unlikely that one-to four-family properties will contain critical actions. However, to avoid confusion on this issue, HUD is amending § 55.22(b) to clarify that the requirements of that paragraph apply only to the disposition of multifamily properties that contain Critical Actions.

Finally, HUD is correcting an inadvertent error in a cross-citation within part 55. Section 55.12(b)(2) refers to the definition of "substantial improvement". The citation to that definition is corrected to refer to § 55.2(b)(8) rather than § 55.12(b)(9).

### Other Matters

The findings and statements made in the preamble to the final rule with respect to Executive Orders 12606, 12612 and 12866 and the Regulatory Flexibility Act are not affected by this technical amendment. The Finding of No Significant Impact with respect to the environment that has been made with respect to this rule is also unaffected.

### List of Subjects in 24 CFR Part 55

Environmental protection, Flood plains.

Accordingly, 24 CFR part 55 is amended as follows:

## PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4001–4128; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117.

### § 55.12 [AMENDED]

2. Section 55.12(b)(2) is amended by deleting "§ 55.2(b)(9)" and adding in its place "§ 55.2(b)(8)".

3. Section 55.22 is amended by revising the section heading to read as set forth below and by adding the word "multifamily" immediately before the words "properties acquired by HUD" in the introductory text of paragraphs (a) and (b) (1).

**§ 55.22 Conveyance restrictions for the disposition of multifamily real property.**

* * * * *

Dated: June 20, 1994.

**Henry G. Cisneros,**

*Secretary.*

[FR Doc. 94–15555 Filed 6–27–94; 8:45 am]

BILLING CODE 4210–32–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[T.D. 8535]**

**RIN 1545–AQ48**

## Like-Kind Exchanges of Property-Coordination With Section 453; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to Treasury Decision 8535, which was published in the **Federal Register** for Wednesday, April 20, 1994 (59 FR 18747). The final income tax regulations relate to the coordination of deferred like-kind exchanges described in section 1031(a)(3) with the installment sale rules of section 453.

**EFFECTIVE DATE:** April 20, 1994.

**FOR FURTHER INFORMATION CONTACT:** Christopher F. Kane, (202) 377–9372 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations that are the subject of this correction provide income tax regulations under section 1031(a)(3) of the Internal Revenue Code.

### Need for Correction

As published, T.D. 8535 contains an error which may prove to be misleading and is in need of clarification.

### Correction of Publication

Accordingly, the publication of the final regulation (T.D. 8535), which was the subject of FR Doc. 94–9557, is corrected as follows:

**§ 1.1031(b)–(2) [Corrected]**

On page 18749, column 2, § 1.1031(b)–(2), the section heading "§ 1.1031(b)–(2) Safe harbor for qualified Intermediaries." is corrected to read "§ 1.1031(b)–2 Safe harbor for qualified Intermediaries.".

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 94–15416 Filed 6–27–94; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP Wilmington 93–005]**

**RIN 2115AA97**

## Safety Zone; Cape Fear River, Wilmington, NC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent safety zone on the Cape Fear River in the vicinity of the Battleship USS NORTH CAROLINA Memorial in the waterfront area of downtown Wilmington, North Carolina. The safety zone is needed to protect people, vessels, and property from safety hazards associated with the annual launching of fireworks from Eagle Island during the 4th of July and Riverfest celebrations.

**EFFECTIVE DATE:** This rule will become effective on June 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** LTJG G. A. Howard, U.S. Coast Guard, Marine Safety Office Wilmington, NC, Phone: (910) 343–4881.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The drafters of this regulation are LTJG G. A. Howard, project officer for the Captain of the Port, Wilmington, North Carolina, and LT M. L. Lombardi, project attorney, Fifth Coast Guard District Legal Office.

### Regulatory History

On September 27, 1993, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (58 FR 50303). The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

### Background and Purpose

In years past, the Coast Guard has provided a safety zone on the Cape Fear River in Wilmington, North Carolina, for several annual events. The fireworks are generally launched during the annual 4th of July celebration, and on the first Saturday of October each year during the Riverfest celebration. The launching of commercial fireworks constitutes a potential safety hazard to the people, vessels, and property in the vicinity. This safety zone is needed to protect the public from the potential hazards near the fireworks display and to insure a smooth launching operation. It will consist of an area of water 200 yards wide and 667 yards long.

### Discussion of Comments

Only one comment was received. The Commentor objected to safety zones in general and did not offer alternatives except for not enacting a safety zone or reducing the size. Because of the past experiences with fireworks displays, the zone is needed. Based on those same experiences and the fireworks used in the displays, the size of the zone is the minimum necessary to protect the public and Coast Guard officers patrolling the zone from unacceptable risks.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

### Small Entities

There were no comments made suggesting any impact to small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

### Environmental Assessment

The Coast Guard has considered the environmental impact of this rule consistent with section 2.B.2.c of Commandant Instruction M16475.1B (National Environmental Protection Act), and actions to protect the public safety have been determined to be categorically excluded from further environmental documentation.

### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

### Regulation

In consideration of the foregoing, Part 165, Subpart F of Title 33, Code of Federal Regulations is amended as follows:

## PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new § 165.515 is added to read as follows:

**§ 165.515 Safety Zone: Cape Fear River, Wilmington, North Carolina.**

(a) *Location.* The following area is a safety zone:

(1) The waters of the Cape Fear River bounded by a line connecting the following points:

| *Latitude* | *Longitude* |
|---|---|
| 34°14'12" N | 77°57'10" W |
| 34°14'12" N | 77°57'06" W |
| 34°13'54" N | 77°57'00" W |
| 34°13'54" N | 77°57'06" W |

(2) The safety zone boundary can be described as follows: starting at the stern of the Battleship USS NORTH CAROLINA, across the Cape Fear River to the north end of the Coast Guard moorings, down along the east bank of the Cape Fear River to the bow of the tug CAPTAIN JOHN TAXIS Memorial (Chandler's Wharf), back across the Cape Fear River to Eagle Island, and then up along the west bank of the Cape Fear River to the stern of the Battleship USS NORTH CAROLINA.

(b) *Definitions. The designated representative of the Captain of the Port*

is any Coast Guard commissioned, warrant , or petty officer who has been authorized by the Captain of the Port, Wilmington, North Carolina to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina, can be contacted at telephone number (910) 343–4895. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 81.

(d) *Regulation.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of the section, but may not block a navigable channel.

(e) *Effective date.* The Captain of the Port will issue a Marine Safety Information Broadcast and a Notice to Mariners to notify the public when this section is in effect.

Dated: June 9, 1994.

**C.F. Eisenbeis,**

*Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.*

[FR Doc. 94–15390 Filed 6–27–94; 8:45 am]

BILLING CODE 4910–14–M

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## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Parts 201, 253, 255, and 259

**[Docket Nos. RM 89–1 and 94–1A]**

### Copyright Arbitration Royalty Panels: Rules and Regulations

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule and corrections.

**SUMMARY:** As directed in the Copyright Royalty Tribunal Reform Act of 1993, the Copyright Office of the Library of Congress adopted the rules and regulations of the Tribunal that were found in 37 CFR chapter III on an interim basis with only technical changes. It later issued revised rules and regulations. The Office failed to amend one of the existing Copyright Office regulations and also erred in several sections of the revised interim regulations. The Office is making only technical changes to correct those errors.

**EFFECTIVE DATE:** June 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Eric Schwartz, Acting General Counsel, Library of Congress, Department 17, Washington, DC 20540. Telephone (202) 707–8380.

**SUPPLEMENTARY INFORMATION:** On December 17, 1993, the President signed into law the Copyright Royalty Tribunal Reform Act of 1993 (Reform Act). Pub. L. No. 103–198. Effective immediately upon enactment, the Reform Act amended the Copyright Act, 17 U.S.C., by eliminating the Copyright Royalty Tribunal and transferring its responsibilities and duties to ad hoc copyright royalty panels, to be administered by the Library of Congress and the Copyright Office. The copyright royalty panels will be convened by the Librarian of Congress for limited times for the purpose of adjusting rates and distributing royalties collected under the compulsory licenses of the Copyright Code. *See* 17 U.S.C. 111, 115, 118, 119, and Chapter 10.

The Reform Act eliminated the Copyright Royalty Tribunal and directed the Librarian of Congress to adopt immediately the rules and regulations of the Tribunal in their entirety. We adopted the Tribunal's regulations with certain technical amendments as interim regulations on December 22, 1993 (58 FR 67690). In one part of these interim regulations we changed the terms "Copyright Royalty Tribunal" and "Tribunal" wherever they appeared to "copyright arbitration royalty panels and/or Librarian of Congress". We did not change any references to the Tribunal in our own regulations at that time.

On May 9, 1994, we issued interim regulations in the **Federal Register** (59 FR 23964) amending the interim regulations we had adopted on December 22, 1993. In the amended regulations of May 9, 1994, we made errors in §§ 253.8(e); 255.3(g)(1); 259.1; 259.2, 259.3(d)(e)(f); and 259.4(a)(b)(d). In the December 22, 1993, amendments, we had changed the designations "Copyright Royalty Tribunal" and "Tribunal" to "copyright arbitration royalty panels and/or Librarian of Congress". We failed to recognize all of these changes when we revised the interim regulation on May 22, 1994, and inserted "Copyright Office" in some sections. However, instead of amending the existing terms "copyright arbitration royalty panel and/or Librarian of Congress" we made these amendments to the already deleted terms "Copyright Royalty Tribunal" and "Tribunal" or "CRT". This document will correct the errors found in the May 9, 1994, document.

Also, we did not earlier amend § 201.16 (a) and (b)(3)(iii) of our regulations to add "the former" in front of Copyright Royalty Tribunal in § 201.16(a) and change "Copyright Royalty Tribunal" to "copyright arbitration royalty panels and/or Librarian of Congress" in § 201.16(b)(3)(iii). This rule is issued as a final rule for § 201.16 (a) and (b)(3)(iii) and a correction of the document of May 9, 1994.

**List of Subjects**

*37 CFR 201*

Copyright, Coin-operated, Phonorecord players.

*37 CFR 253*

Copyright, Music, Radio, Rates, Television.

*37 CFR 255*

Copyright, Music, Recordings.

*37 CFR 259*

Claims, Copyright, Digital audio recording devices and media.

For the reasons set out in the preamble, 37 CFR chapter II is amended or corrected under the authority of 17 U.S.C. 702 and 802(d).

**§ 201.16 [Amended]**

1. Section 201.16 is amended.

1a. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702 and 802(d).

1b. In paragraph (a) by adding "the former" in front of Copyright Royalty Tribunal.

1c. In paragraph (b)(3)(iii) by removing "Copyright Royalty Tribunal" and adding in its place "copyright arbitration royalty panel and/or Librarian of Congress".

2. In the rule document beginning on page 23964 in the issue of Monday, May 9, 1994, make the following corrections.

**§ 255.3 [Corrected]**

2a. On page 23993, in the third column in the amendment to § 255.3, remove "Copyright Royalty Tribunal" and replace it with "copyright arbitration royalty panel and/or Librarian of Congress".

**§ 259.1 [Corrected]**

2b. On page 23994, in the third column in the amendment to § 259.1, remove "Copyright Royalty Tribunal" and replace it with "copyright arbitration royalty panel and/or Librarian of Congress".

**§ 259.2 [Corrected]**

2c. On page 23994, in the third column in the amendment to § 259.2, remove "Copyright Royalty Tribunal" and replace it with "copyright arbitration royalty panel and/or Librarian of Congress".

**§ 259.3 [Corrected]**

2d. On page 23994, in the third column in the amendment to § 259.3, remove "Copyright Royalty Tribunal" and replace it with "copyright arbitration royalty panel and/or Librarian of Congress".

**§ 259.4 [Corrected]**

2e. On page 23995, in the first column in the amendment to § 259.4, remove "Copyright Royalty Tribunal" and replace it with "copyright arbitration royalty panel and/or Librarian of Congress".

**Barbara Ringer,**

*Acting Registrar of Copyrights.*

[FR Doc. 94–15524 Filed 6–27–94; 8:45 am]

BILLING CODE 1410–09–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OR–38–1–6335a; FRL–4998–8]

## Approval and Promulgation of State Implementation Plan: Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the State of Oregon's contingency measure plan as a revision to Oregon's State Implementation Plan (SIP) for carbon monoxide (CO). EPA's action is based upon a revision request which was submitted by the state to satisfy a requirement of the Clean Air Act Amendments (CAAA) for Grants Pass, Medford, Portland, and Klamath Falls, Oregon.

**DATES:** This final rule will be effective on August 29, 1994 unless adverse or critical comments are received by July 28, 1994. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments should be addressed to: Montel Livingston, SIP Manager, EPA, Air & Radiation Branch (AT–082), Docket # OR–38–1–6335, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, Oregon 97204–1390.

**FOR FURTHER INFORMATION CONTACT:** Christi Lee, Air & Radiation Branch (AT–082), EPA, Seattle, Washington 98101, (206) 553–1814.

**SUPPLEMENTARY INFORMATION:**

### I. Background

States containing CO nonattainment areas with design values of 12.7 ppm or less were required to submit, among other things, contingency measures to satisfy the provisions under section 172(c)(9). These provisions require contingency measures to be implemented in the event that an area fails to reach attainment by the applicable attainment date, December 31, 1995. Contingency measures were due by November 15, 1993, as set by EPA under section 172(b) of the Act.

Contingency measures must be implemented within 12 months after the finding of failure to attain the CO National Ambient Air Quality Standards (NAAQS). Once triggered they must take effect without further action by the state or EPA, therefore, all contingency measures must be adopted and enforceable prior to submittal to EPA.

The CAAA does not specify how many contingency measures are needed or the magnitude of emission reductions they must provide if an area fails to attain the CO NAAQS. EPA believes that one appropriate choice of contingency measures would be to provide for the implementation of sufficient vehicle miles traveled (VMT) reductions or emissions reductions to counteract the effect of one year's growth in VMT while the state revises its SIP to incorporate all of the new requirement of a serious CO area.

### II. This Action

In this action, EPA is approving Oregon's SIP revision submitted to EPA on November 15, 1993 for Grants Pass, Medford, Portland and Klamath Falls, Oregon because it meets the applicable requirements of the Act.

The State of Oregon held public hearings in Grants Pass, Medford, Portland and Klamath Falls on August 16, 17, and 18, 1993 respectively to entertain public comment on the CO contingency measure SIP revision. Following the public hearing, the plan was adopted by the Environmental Quality Commission on October 29, 1993, and became effective on November 4, 1993. The Oregon Department of Environmental Quality (ODEQ) submitted the plan to EPA on November 15, 1993 as a proposed revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated March 8, 1994 was forwarded to ODEQ's Director indicating the completeness of the submittal.

#### Analysis of State Submission

Oregon's CO contingency plan requires oxygenates to be supplied at maximum allowable oxygen contents (e.g. 3.5% ethanol and 2.7% methyl tertiary butyl ether (MTBE)). A specified minimum average oxygen content level of 2.9% would be required only if, in subsequent control seasons, the projected control area average oxygen content would be less than 3.1%. This projection will be based on reported oxygenate mix information submitted by the regulated community.

If any of Oregon's four CO nonattainment areas fail to meet applicable standards by the December 31, 1995 Clean Air Act (CAA) deadline, or in any subsequent year prior to redesignation to attainment, implementation of the contingency provision will be formally triggered by written notification to ODEQ from the EPA, or by written notification from ODEQ to affected fuel suppliers in order to give as much lead time as possible to implement the CO contingency plan for the 1996–97 CO season. Oxy-fuel suppliers will be provided at least eight months to implement CO contingency plans from the time notification is received from ODEQ or from EPA, whichever is sooner. ODEQ would expect to notify suppliers no later than March 1 in order to ensure that oxy-fuel is supplied for the entire winter CO season. EPA is legally required to make such notification within six months of the end of calendar year 1995. If a

standard violation occurs during 1994, the above implementation time frame could be accelerated by as much as two full years.

After the CO contingency plan is triggered and oxygenates are being supplied at maximum EPA approved levels, ODEQ will assess seasonal oxygenate mix reports to project whether an average control area oxygen content of 3.1% will be reached in subsequent control periods. If ODEQ's projection indicates that the oxygen content will be less than 3.1%, a 2.9% mandatory average oxygen content to be achieved by all Control Area Responsible Parties (CARs) and blender CARs, will be implemented for future control periods. If mandated, a 2.9% oxygen content level could be achieved by: (a) Using only ethanol as an oxygenate; or (b) through an averaging program using MTBE or other oxygenates and ethanol. An averaging program would require that at least 25% of the total volume of fuel supplied to a control area be oxygenated with ethanol to meet an oxygen content of 3.5%. The remaining 75% of total volume could be oxygenated with MTBE or other oxygenates at a 2.7% level to yield an average oxygen content over the control period of 2.9%.

EPA recently promulgated regulations for reformulated gasoline that control the oxygen content of gasoline under section 211(c)(1) of the Act in certain ozone nonattainment areas, 59 FR 7716 (February 16, 1994). Since the reformulated gasoline program would not apply to the gasoline marketed in the Oregon CO nonattainment areas at issue here, EPA does not believe that Oregon's contingency measures to impose controls on oxygen content beyond those statutorily required under section 211(m) would be preempted under section 211(c)(4) of the Act.

In addition to the CO contingency plan, the revision contains housekeeping changes to clarify and improve the organization of the oxy-fuel regulations to minimize misinterpretation. EPA approves of these changes.

### III. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.SE.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on August 29, 1994 unless adverse comments are received by July 28, 1994. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule (please see short informational notice published, simultaneously, in the proposal section of this **Federal Register**).

Nothing is this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 29, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

NOTE: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

Dated: June 3, 1994.

**Chuck Clarke,**

*Regional Administrator*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (105) to read as follows:

**§ 52.1970 Identification of plan.**

* * * * *

(c) * * *

(105) On November 15, 1993, the Director of ODEQ submitted Oregon's contingency measure plan as a revision to Oregon's SIP for carbon monoxide (CO) for Grants Pass, Medford, Portland, and Klamath Falls, Oregon.

(i) Incorporation by reference.(A) November 15, 1993 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon SIP.

(B) Oregon Administrative Rules, Chapter 340–22–440 through 340–22–650, Vol. 2, Sections 4.2, 4.9, 4.11, Carbon Monoxide Control Strategies, effective November 4, 1993.

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[FR Doc. 94–15674 Filed 6–27–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP-300343A; FRL-4896-2]

RIN 2070-AB78

## Pesticide Tolerances for 1-[(6-Chloro-3-Pyridinyl)Methyl]-N-Nitro-2-Imidazolidinimine

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes time-limited tolerances for residues of the insecticide 1-[[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidzolidinimine and its metabolites (common name "imidacloprid") in or on dried hops at 3.0 parts per million (ppm), milk at 0.05 ppm, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm, with an expiration date of 1 year after the beginning of the effective date of a final rule based on this proposal. EPA is issuing this proposal on its own initiative.

**EFFECTIVE DATE:** This regulation becomes effective June 17, 1994.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [OPP-300343A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis Edwards, Jr., Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 16, 1994 (59 FR 25431), EPA issued a proposed rule that on its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA proposed a time-limited tolerance for residues of imidacloprid on dried hops at 3.0 parts per million (ppm). EPA recently reclassified dried hops as a raw agricultural commodity (59 FR 9167; Feb. 25, 1994 and 59 FR 17487; April 13, 1994). EPA is establishing the tolerance because it has granted a petition for an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p, for the use of imidacloprid on hops in the States of Washington, Oregon, and Idaho; imidacloprid is used in other countries that export hops to the United States; and the database for imidacloprid is relatively complete. The most significant data gap for establishing a permanent tolerance for imidacloprid on dried hops is a third field-residue trial. Given the relatively low risks presented by imidaclorprid, EPA does not believe that the missing data will significantly change EPA's risk assessment. Nevertheless, EPA is establishing a 1-year time limitation on this tolerance for a full residue data base to be available in making a decision on a permanent tolerance.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerance will protect the public health. Therefore, the time-limited tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 17, 1994.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. By adding new § 180.472, to read as follows:

**§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-2-imidazolidinimine; tolerances for residues.**

Time-limited tolerances, to expire June 28, 1995, are established permitting the combined residues of the insecticide 1-[(6-chloro-3-pyridinyl) methyl]-*N*-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)-methyl]-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.2 |
| Cattle, meat | 0.2 |
| Cattle, meat byproducts | 0.2 |
| Hops, dried | 3.0 |
| Goats, fat | 0.2 |
| Goats, meat | 0.2 |
| Goats, meat byproducts | 0.2 |
| Hogs, fat | 0.2 |
| Hogs, meat | 0.2 |
| Hogs, meat byproducts | 0.2 |
| Horses, fat | 0.2 |
| Horses, meat | 0.2 |
| Horses, meat byproducts | 0.2 |
| Milk | 0.05 |
| Sheep, fat | 0.2 |
| Sheep, meat | 0.2 |
| Sheep, meat byproducts | 0.2 |

[FR Doc. 94–15679 Filed 6–27–94; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Part 372

**[OPPTS–400063A; FRL–4767–5]**

## Barium Sulfate; Toxic Chemical Release Reporting; Community Right-To-Know

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is deleting barium sulfate from the category "barium compounds" on the list of toxic chemicals for which reporting is required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). This action is based on EPA's conclusion that barium sulfate meets the deletion criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of barium sulfate that occurred during the 1993 reporting year, and releases that will occur in the future.

**DATES:** This rule is effective June 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Maria J. Doa, Petitions Coordinator, 202–260–9592, for specific information regarding this final rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

*A. Statutory Authority*

This action is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

*B. Background*

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106, "PPA"). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added chemicals to and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

### II. Effective Date

This action becomes effective immediately. Thus, the last year in which facilities had to report releases of barium sulfate was 1993, covering releases that occurred in 1992. The effect of this deletion is that, since barium sulfate will not be on the section 313 list when facilities report in 1994 for releases that occured in 1993, these reports and all subsequent reports need not include barium sulfate release data. Facilities will therefore not have to collect release information for any releases of barium sulfate that occur during the 1993 reporting year or for any releases that occur in the future.

Section 313(d)(4) provides that "[a]ny revision [to the section 313 list] made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 and before January 1 shall take effect beginning with the calendar year following the next calendar year." The Agency interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, the Agency may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) since a deletion from the section 313 list relieves a regulatory restriction.

The Agency believes that the purpose behind the section 313(d)(4) effective date provision is to allow facilities adequate planning time to incorporate newly added chemicals to their TRI release data collection processes. A facility would not need additional planning time to not report releases of a given chemical. Thus, a reasonable construction of section 313(d)(4), given the overall purpose and structure of EPCRA — to provide the public with information about chemicals which meet the criteria for inclusion on the section 313 list — is to apply the delayed effective date requirement only to additions to the list. Where the Agency has determined, as it has with barium sulfate, that a chemical does not satisfy the criteria of section 313(d)(2)(A)-(C), no purpose is served by requiring facilities to collect release data or file release reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. Nothing in the legislative history suggests that 313(d)(4) was intended to apply to deletions as well as additions; indeed,

such a construction would be incongruous, since deleted chemicals, by definition, do not satisfy the criteria for being on the section 313 list and their deletion from that list should not be delayed in the absence of any compelling reason to the contrary. This construction of section 313(d)(4) is also consistent with previous rules deleting chemicals from the section 313 list. Indeed, the Agency has not given any of its rules deleting chemicals from the section 313 list the delayed effective dates specified in section 313(d)(4).

## III. Description of Petition and Rationale for Delisting

### *A. Petition and Proposed Action*

On September 24, 1991, EPA received a petition from the Chemical Products Corporation (CPC) to delete barium sulfate ($BaSO_4$) from the list of toxic chemicals established under EPCRA section 313. A second petition, submitted by the Dry Color Manufacturer's Association (DCMA), to delete barium sulfate was received on November 6, 1991. Both petitions are based on the contention that barium sulfate is not toxic and does not meet any of the statutory criteria under EPCRA section 313(d)(2).

Following a review of the petitions, EPA granted the petitions and issued a proposed rule in the **Federal Register** of June 11, 1993 (58 FR 32622), to delete barium sulfate from the category "barium compounds" on the list of toxic chemicals under EPCRA section 313. EPA's proposal was based on its conclusion that $BaSO_4$ meets the EPCRA section 313(d)(3) criteria for deletion from the list. With respect to deletions, EPCRA section 313(d)(3) provides that "[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)-(C)]." Specifically, in the proposal EPA preliminarily concluded that there is not sufficient evidence to establish that $BaSO_4$ causes adverse acute human health effects, chronic human health effects, or environmental toxicity. EPA's rationale is detailed in the proposed rule and is based on the Agency's review of the petitions, as well as other relevant materials:

### *B. Rationale for Delisting*

After reviewing comments received and other relevant information, EPA has concluded that the assessment set out in the proposed rule should be affirmed. Therefore, this final rule is based on EPA's conclusion that $BaSO_4$ is essentially non-toxic to humans and the environment, and thus meets the EPCRA section 313(d)(3) criterion for delisting (i.e., it does not meet any of the EPCRA section 313(d)(2) listing criteria).

In reaching this conclusion, EPA considered the toxicity of the barium ion because another potential source of barium sulfate toxicity could be from the barium ion. EPA initially analyzed the availability of barium ion. If the ion is not available, barium sulfate cannot cause toxicity due to barium ion. EPA has concluded that barium ion from barium sulfate will not be available to humans or the environment in any way that would affect the Agency's decision under EPCRA section 313(d)(3). This is because barium ion from barium sulfate will occur at significant levels only under anaerobic conditions in stagnant water bodies that are cut-off from surface and ground waters. As discussed below, such conditions do not give rise to human health or environmental concerns under the EPCRA section 313(d)(2) criteria.

Because intact $BaSO_4$ is acutely toxic only at levels that greatly exceed releases and resultant exposures, $BaSO_4$ cannot reasonably be anticipated to cause ". . .significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases." EPA believes that barium ion anaerobically released from barium sulfate into isolated stagnant water bodies cannot reasonably be anticipated to result in adverse effects on human health because people do not routinely use these waters as sources of drinking water or food, or for recreation. Under other conditions, barium ion could not be an issue because it is not available. Thus, EPA has concluded that $BaSO_4$ does not meet the toxicity criterion for listing under EPCRA section 313(d)(2)(A).

EPA has concluded that $BaSO_4$ does not meet the toxicity criteria of EPCRA section 313(d)(2)(B) because $BaSO_4$ cannot reasonably be anticipated to cause cancer, developmental toxicity, reproductive toxicity, neurotoxicity, gene mutations, or chronic toxicity. Intact $BaSO_4$ is not known to cause such effects, and for the reasons discussed above barium ion will not be available to cause chronic human toxicity.

EPA has concluded that $BaSO_4$ does not meet the EPCRA section 313(d)(2)(C) toxicity criteria because of the lack of availability of soluble barium from barium sulfate. Moreover, ecotoxicity data indicate that barium ion generated in low sulfate, anaerobic environments cannot reasonably be anticipated to result in adverse effects on the environment of sufficient seriousness to warrant reporting under EPCRA section 313.

### *C. Response to Comments*

EPA received 34 comments on the proposed rule, all in support of the deletion of barium sulfate. While all the comments received were in support of the deletion, a few commenters requested clarification on some points discussed in the proposed rule.

Two commenters wanted clarification of the statement regarding the water solubility of barium sulfate and how it relates to the maximum contaminant level (page 32624, second column, first full paragraph). EPA agrees with the commenters that, at the water solubility of 2.4 mg/L (2.4 ppm) at 25 °C, there are 1.4 ppm of barium ion and 1.0 ppm of sulfate ion, and that the 1.4 ppm concentration of barium ion is below the maximum contaminant level of 2 mg/L (2 ppm) established by EPA under the Safe Drinking Water Act.

Many commenters requested clarification of EPA's characterization of the regulatory status of barium sulfate under the Resource Conservation and Recovery Act (RCRA) and the disposal of drilling fluids. Specifically, one commenter stated that EPA did not clarify that discharges of drilling fluids are in fact exempt from EPCRA as well as RCRA. Another commenter stated that EPA should clarify the statement in the proposed rule that there are no Federal regulations prohibiting land disposal of drilling fluids to include the possibility of state regulations. EPA agrees with the commenters that some clarification is needed on these issues. 40 CFR 261.4(b)(5) exempts from Federal regulation as hazardous waste drilling fluids and other wastes from the exploration, development, or production of crude oil, natural gas, or geothermal energy. Therefore, EPA regulations do not prohibit the land disposal of drilling fluids. This activity, however, may be regulated by state agencies. In addition, the commenter added that underground injection controls pursuant to the Safe Drinking Water Act and the National Pollutant Discharge Elimination System program under the Clean Water Act also regulate drilling waste. EPA does not agree with the comment that disposal of drilling fluids is totally exempt from EPCRA reporting. Although the discharge of drilling fluids is not specifically reportable under EPCRA section 313, the drilling fluids may contain a reportable component and the discharge of that chemical would require reporting if all applicable criteria are met.

One commenter wanted clarification of the statements "Although the TCLP may indicate that barium sulfate is not a hazardous waste as defined by RCRA. . ." and later, "Furthermore, drilling fluids are specifically exempted and are not considered hazardous wastes under RCRA including those containing barium sulfate, even if the barium sulfate itself meets the TCLP (40 CFR 261.4)" (page 32624, column 1, second and third full paragraphs). To clarify, barium sulfate is not a listed hazardous waste as defined by RCRA. Furthermore, the exemption under 40 CFR 261.4(b)(5) for barium sulfate in drilling fluids may apply. EPA notes that barium is one of the contaminants tested for in the Toxicity Characteristics (TC) of 40 CFR 261.24. However, due to its limited water solubility, barium sulfate is not expected to produce an extractable concentration of barium that exceeds the maximum allowable concentration of soluble barium (100 mg/L) using the Toxicity Characteristic Leaching Procedure (TCLP) as described in 40 CFR 261.24. Thus, in these cases, land disposal of barium sulfate is not regulated under RCRA subtitle C. However, EPA reiterates that the TCLP is not conducted under anaerobic (reducing) conditions and that it is possible for barium sulfate to liberate soluble barium under such conditions. Thus, even though land disposal of barium sulfate is permissible under RCRA if TC levels for barium are not exceeded, such disposal may lead to the availability of soluble barium.

One commenter claimed that throughout the proposal EPA placed too much emphasis on the release of barium ion from barium sulfate under anaerobic conditions. In addition, the commenter added that it is unlikely that disposal of drilling fluids as solid wastes would "encourage perched water and anaerobic digestion of barium sulfate in low sulfate environments." In the proposed rule EPA wanted to make clear that although barium sulfate is poorly soluble (i.e., does not significantly dissociate to barium and sulfate ions) in water, it is still possible for this substance to liberate barium ion in water as a result of anaerobic degradation. In the proposed rule EPA cited several studies which clearly show that barium ion concentrations can become elevated as a result of anaerobic degradation of barium sulfate. EPA agrees with the commenter that it is probably unlikely that discharge of barium sulfate-containing drilling fluids will encourage the formation of stagnant waterbodies, where anaerobic degradation is likely to occur. In its discussions on the availability of barium ion from barium sulfate (units IV.D. and E. of the proposed rule) the Agency did not specifically address discharges of drilling fluids containing barium sulfate. Although EPA cited studies that showed elevated barium ion concentrations in experiments which used drilling fluids that contained barium sulfate, the main purpose of these discussions is to illustrate that under certain environmental conditions barium ion can become available from barium sulfate, regardless of the source of the barium sulfate.

One commenter stated in the proposal that EPA does not clearly make the distinction that barium is not a heavy metal (page 32626, column 3, first full paragraph). EPA agrees that barium is not a heavy metal, and it is not EPA's intent to imply that barium is or can be viewed as a heavy metal. EPA was describing how the solubility of barium sulfate may be influenced by factors other than sulfate concentration. EPA used references which describe how substances normally found in the environment (e.g., fulvic and humic acids, bicarbonate, and hydroxyl ions) or soil particle grain size can enhance the solubility of otherwise poorly soluble metal salts, such as salts of heavy metals. EPA maintains that the cited studies provide sufficient evidence that the solubility of any metal salt may be significantly affected by a variety of naturally occurring environmental conditions. The same commenter provided additional information on the toxicity of barium ion. EPA is considering this information but is not addressing it in this final rule since it is not relevant to this delisting. In accordance with the May 23, 1991 guidance, this delisting decision is made on the basis of availability of barium ion and not on barium ion toxicity. If the ion is not available, its inherent toxicity is irrelevant because it cannot cause adverse effects. Today's action is not intended, and should not be inferred to affect the status of $BaSO_4$ under any statute or program other than the Toxic Chemical Release Inventory reporting under EPCRA section 313 and PPA section 6607.

## IV. Rulemaking Record

The record supporting this final rule is contained in the docket number OPPTS–400063A. All documents, including an index of the docket, are available in the TSCA Document Receipt Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Document Receipt Office is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

## V. Regulatory Assessment Requirements

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Section 3(f) of the Order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this final rule is not "significant" and therefore not subject to OMB review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the final rule. Because this final rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

### *C. Paperwork Reduction Act*

This final rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

## List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 16, 1994.

**Lynn R. Goldman,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 372 is amended to read as follows:

## Part 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

**Authority:** 42 U.S.C. 11023 and 11048.

## § 372.65 [Amended]

2. In § 372.65(c), by adding the following language to the barium compounds listing "(except for barium sulfate, (CAS No. 7727–43–7)."

[FR Doc. 94–15578 Filed 6–27–94; 8:45 am]

BILLING CODE 6560–50–F

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## 40 CFR Part 763

**[OPPTS–62114B; FRL–4776–7]**

## Technical Amendment in Response to Court Decision on Asbestos; Manufacture, Importation, Processing and Distribution Prohibitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Technical amendment.

**SUMMARY:** EPA is revising the language of the Prohibition of the Manufacture, Importation, Processing, and Distribution in Commerce of Certain Asbestos-containing Products; Labeling Requirements Rule (also known as the Asbestos Ban and Phase Out or ABPO Rule) in the Code of Federal Regulations (CFR) to conform to a court decision that vacated and remanded part of the ABPO Rule and to an EPA factfinding conducted in accordance with the court's decision. The ABPO Rule prohibited the manufacture, importation, processing, and distribution in commerce of most asbestos-containing products in three stages over 7 years beginning in 1990. On October 18, 1991, the United States Court of Appeals for the Fifth Circuit (the court) vacated and remanded most of the ABPO Rule. In a subsequent clarification, the court said the rule continued to govern asbestos-containing products that were not being manufactured, imported, or processed on July 12, 1989. EPA conducted a factfinding and concluded that six asbestos-containing product categories in the ABPO Rule were not being manufactured, processed, or imported on July 12, 1989, and thus are still subject to the rule. This document revises the CFR to conform to the findings of EPA in accordance with the court decision, and requires no notice and public comment.

**EFFECTIVE DATE:** This document is effective on June 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 12, 1989 (54 FR 29460), EPA issued a final rule under section 6 of the Toxic Substances Control Act (TSCA)(15 U.S.C. 2605) that prohibited the manufacture, importation, processing, and distribution in commerce of most asbestos-containing products in three stages over 7 years (40 CFR 763.160 through 763.179). Stage 1 of the ban went into effect in August 1990. Stages 2 and 3 were scheduled to go into effect in 1993 and 1996 respectively.

On October 18, 1991, the United States Court of Appeals for the Fifth Circuit vacated and remanded most of the ABPO Rule. *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir., 1991). In a latter clarification, the court stated that product categories in the ABPO Rule that were no longer being manufactured, imported, or processed on July 12, 1989, when the ABPO Rule was issued were still subject to the rule. *Id.* at 1230. The court left it to EPA to resolve any factual disputes about which product categories in the ABPO Rule were no longer in commerce on July 12, 1989.

As a result, in order to determine which product categories in the ABPO Rule were still subject to the rule, EPA published a document in the **Federal Register** of April 2, 1992 (57 FR 11364), that requested information on the commercial status on July 12, 1989, of 14 product categories in the rule that may no longer have been manufactured, processed, or imported when the rule was published on July 12, 1989. In addition, EPA solicited information on the commercial status of any other product category in the ABPO Rule that also may no longer have been manufactured, processed, or imported on July 12, 1989. EPA supplemented the original information in the RIA with the comments received in response to the **Federal Register** notice and with additional research.

EPA published a document in the **Federal Register** of November 5, 1993 (58 FR 58964), that announced its findings concerning the regulatory status of the product categories in the ABPO Rule. EPA concluded that six asbestos-containing product categories were not being manufactured, processed, or imported on July 12, 1989, and thus are still subject to the rule. The remaining product categories were being manufactured, processed, or imported on July 12, 1989, and are no longer subject to the rule.

Accordingly, EPA is issuing this document to revise the language of the ABPO Rule in the CFR to conform to the October 1991 court decision that remanded the rule and to the November 1992 factual findings of EPA, in accordance with the court decision.

### List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Hazardous substances.

Dated: June 21, 1994.

**Victor J. Kimm,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 763 is amended as follows:

## PART 763—[AMENDED]

1. The authority citation for part 763 continues to read as follows:

**Authority:** 15 U.S.C. 2605 and 2607(c).

2. By revising § 763.163 to read as follows.

### § 763.163 Definitions.

For purposes of this subpart:

*Act* means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

*Agency* means the United States Environmental Protection Agency.

*Asbestos* means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite; and actinolite.

*Asbestos-containing product* means any product to which asbestos is deliberately added in any concentration or which contains more than 1.0 percent asbestos by weight or area.

*Chemical substance*, has the same meaning as in section 3 of the Act.

*Commerce* has the same meaning as in section 3 of the Act.

*Commercial paper* means an asbestos-containing product which is made of paper intended for use as general insulation paper or muffler paper. Major applications of commercial papers are insulation against fire, heat transfer, and corrosion in circumstances that require a thin, but durable, barrier.

*Corrugated paper* means an asbestos-containing product made of corrugated paper, which is often cemented to a flat

backing, may be laminated with foils or other materials, and has a corrugated surface. Major applications of asbestos corrugated paper include: thermal insulation for pipe coverings; block insulation; panel insulation in elevators; insulation in appliances; and insulation in low-pressure steam, hot water, and process lines.

*Customs territory of the United States* means the 50 States, Puerto Rico, and the District of Columbia.

*Distribute in commerce* has the same meaning as in section 3 of the Act, but the term does not include actions taken with respect to an asbestos-containing product (to sell, resale, deliver, or hold) in connection with the end use of the product by persons who are users (persons who use the product for its intended purpose after it is manufactured or processed). The term also does not include distribution by manufacturers, importers, and processors, and other persons solely for purposes of disposal of an asbestos-containing product.

*Flooring felt* means an asbestos-containing product which is made of paper felt intended for use as an underlayer for floor coverings, or to be bonded to the underside of vinyl sheet flooring.

*Import* means to bring into the customs territory of the United States, except for: (1) Shipment through the customs territory of the United States for export without any use, processing, or disposal within the customs territory of the United States; or (2) entering the customs territory of the United States as a component of a product during normal personal or business activities involving use of the product.

*Importer* means anyone who imports a chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the United States. *Importer* includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term includes as appropriate:

(1) The consignee.

(2) The importer of record.

(3) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(4) The transferee, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of 19 CFR Part 144.

*Manufacture* means to produce or manufacture in the United States.

*Manufacturer* means a person who produces or manufactures in the United States.

*New uses of asbestos* means commercial uses of asbestos not identified in § 763.165 the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989.

*Person* means any natural person, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof, or any municipality; any interstate body and any department, agency, or instrumentality of the Federal Government.

*Process* has the same meaning as in section 3 of the Act.

*Processor* has the same meaning as in section 3 of the Act.

*Rollboard* means an asbestos-containing product made of paper that is produced in a continuous sheet, is flexible, and is rolled to achieve a desired thickness. Asbestos rollboard consists of two sheets of asbestos paper laminated together. Major applications of this product include: office partitioning; garage paneling; linings for stoves and electric switch boxes; and fire-proofing agent for security boxes, safes, and files.

*Specialty paper* means an asbestos-containing product that is made of paper intended for use as filters for beverages or other fluids or as paper fill for cooling towers. Cooling tower fill consists of asbestos paper that is used as a cooling agent for liquids from industrial processes and air conditioning systems.

*State* has the same meaning as in section 3 of the Act.

*Stock-on-hand* means the products which are in the possession, direction, or control of a person and are intended for distribution in commerce.

*United States* has the same meaning as in section 3 of the Act.

3. By revising § 763.165 to read as follows:

**§ 763.165 Manufacture and importation prohibitions.**

(a) After August 27, 1990, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: flooring felt and new uses of asbestos.

(b) After August 26, 1996, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: commercial paper, corrugated paper, rollboard, and specialty paper.

(c) The import prohibitions of this subpart do not prohibit:

(1) The import into the customs territory of the United States of products imported solely for shipment outside the customs territory of the United States, unless further repackaging or processing of the product is performed in the United States; or

(2) Activities involving purchases or acquisitions of small quantities of products made outside the customs territory of the United States for personal use in the United States.

4. By revising § 763.167 to read as follows:

**§ 763.167 Processing prohibitions.**

(a) After August 27, 1990, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 26, 1996, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(b).

5. By revising § 763.169 to read as follows:

**§ 763.169 Distribution in commerce prohibitions.**

(a) After August 25, 1992, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 25, 1997, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(b).

(c) A manufacturer, importer, processor, or any other person who is subject to a ban on distribution in commerce in paragraph (a) or (b) of this section must, within 6 months of the effective date of the ban of a specific asbestos-containing product from distribution in commerce, dispose of all their remaining stock-on-hand of that product, by means that are in compliance with applicable local, State, and Federal restrictions which are current at that time.

6. By revising § 763.171 to read as follows:

**§ 763.171 Labeling requirements.**

(a) After August 27, 1990, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(a) shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and

processors' stock-on-hand as of August 27, 1990.

(b) After August 25, 1995, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(b), shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and processors' stock-on-hand as of August 25, 1995.

(c) The label shall be placed directly on the visible exterior of the wrappings and packaging in which the product is placed for sale, shipment, or storage. If the product has more than one layer of external wrapping or packaging, the label must be attached to the innermost layer adjacent to the product. If the innermost layer of product wrapping or packaging does not have a visible exterior surface larger than 5 square inches, either a tag meeting the requirements of paragraph (d) of this section must be securely attached to the product's innermost layer of product wrapping or packaging, or a label must be attached to the next outer layer of product packaging or wrapping. Any products that are distributed in commerce to someone other than the end user, shipped, or stored without packaging or wrapping must be labeled or tagged directly on a visible exterior surface of the product as described in paragraph (d) of this section.

(d)(1) Labels must be either printed directly on product packaging or in the form of a sticker or tag made of plastic, paper, metal, or other durable substances. Labels must be attached in such a manner that they cannot be removed without defacing or destroying them. Product labels shall appear as in paragraph (d)(2) of this section and consist of block letters and numerals of color that contrasts with the background of the label or tag. Labels shall be sufficiently durable to equal or exceed the life, including storage and disposal, of the product packaging or wrapping. The size of the label or tag must be at least 15.25 cm (6 inches) on each side. If the product packaging is too small to accommodate a label of this size, the label may be reduced in size proportionately to the size of the product packaging or wrapping down to a minimum 2.5 cm (1 inch) on each side if the product wrapping or packaging has a visible exterior surface larger than 5 square inches.

(2) Products subject to this subpart shall be labeled in English as follows:

NOTICE

This product contains *ASBESTOS.* The U.S. Environmental Protection Agency has banned the distribution in U.S. commerce of this product under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) as of (insert effective date of ban on distribution in commerce). Distribution of this product in commerce after this date and intentionally removing or tampering with this label are *violations of Federal law.*

(e) No one may intentionally remove, deface, cover, or otherwise obscure or tamper with a label or sticker that has been applied in compliance with this section, except when the product is used or disposed of.

7. In § 763.173 by revising the section heading and paragraphs (a), (b), (c), and (g) to read as follows:

**§ 763.173 Exemptions.**

(a) Persons who are subject to the prohibitions imposed by §§ 763.165, 763.167, or 763.169 may file an application for an exemption. Persons whose exemption applications are approved by the Agency may manufacture, import, process, or distribute in commerce the banned product as specified in the Agency's approval of the application. No applicant for an exemption may continue the banned activity that is the subject of an exemption application after the effective date of the ban unless the Agency has granted the exemption or the applicant receives an extension under paragraph (b)(4) or (5) of this section.

(b) Application filing dates. (1) Applications for products affected by the prohibitions under §§763.165(a) and 763.167(a) may be submitted at any time and will be either granted or denied by EPA as soon as is feasible.

(2) Applications for products affected by the ban under §763.169(a) may be submitted at any time and will be either granted or denied by EPA as soon as is feasible.

(3) Applications for products affected by the ban under §§763.165(b) and 763.167(b) may not be submitted prior to February 27, 1995. Complete applications received after that date, but before August 25, 1995, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1995, will be either granted or denied by EPA as soon as is feasible.

(4) Applications for products affected by the ban under § 763.169(b) may not be submitted prior to February 26, 1996. Complete applications received after that date, but before August 26, 1996, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 26, 1996, will be either granted or denied by EPA as soon as is feasible.

(5) The Agency will consider an application for an exemption from a ban under § 763.169 for a product at the same time the applicant submits an application for an exemption from a ban under § 763.165 or § 763.167 for that product. EPA will grant an exemption at that time from a ban under § 763.169 if the Agency determines it appropriate to do so.

(6) If the Agency denies an application less than 30 days before the effective date of a ban for a product, the applicant can continue the activity for 30 days after receipt of the denial from the Agency.

(7) If the Agency fails to meet the deadlines stated in paragraphs (b)(3) and (b)(4) of this section for granting or denying a complete application in instances in which the deadline is before the effective date of the ban to which the application applies, the applicant will be granted an extension of 1 year from the Agency's deadline date. During this extension period the applicant may continue the activity that is the subject of the exemption application. The Agency will either grant or deny the application during the extension period. The extension period will terminate either on the date the Agency grants the application or 30 days after the applicant receives the Agency's denial of the application. However, no extension will be granted if the Agency is scheduled to grant or deny an application at some date after the effective date of the ban, pursuant to the deadlines stated in paragraphs (b)(3) and (b)(4) of this section.

(c) Where to file. All applications must be submitted to the following location: TSCA Docket Receipts Office (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Rm E–G99, 401 M St., SW., Washington, DC 20460, ATTENTION: Asbestos Exemption. For information regarding the submission of exemptions containing information claimed as confidential business information (CBI), see § 763.179.

* * * * *

(g) If the application does not include all of the information required in paragraph (d) of this section, the Agency will return it to the applicant as incomplete and any resubmission of the application will be considered a new application for purposes of the availability of any extension period. If

the application is substantially inadequate to allow the Agency to make a reasoned judgment on any of the information required in paragraph (d) of this section and the Agency chooses to request additional information from the applicant, the Agency may also determine that an extension period provided for in paragraph (b)(5) of this section is unavailable to the applicant.

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[FR Doc. 94–15676 Filed 6–27–94; 8:45 am]
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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 14

RIN 1018–AC07

## Conferring Designated Port Status on Boston, MA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service confers designated port status on Boston, Massachusetts pursuant to section 9(f) of the Endangered Species Act of 1973. The direct importation and exportation of fish and wildlife, including parts and products, will now be permitted through Boston, Massachusetts. Under this final rule, Boston, Massachusetts will be added to the list of Customs ports of entry designated for the importation and exportation of wildlife. A public hearing on this proposal was held on December 8, 1993, in the Massachusetts Port Authority, Maritime Department, Fish Pier East II, Northern Avenue, Boston, Massachusetts 02210.

**EFFECTIVE DATE:** This rule is effective on July 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Special Agent A. Eugene Hester, Assistant Regional Director, U.S. Fish and Wildlife Service, P.O. Box 779, Hadley, Massachusetts, ((413) 253–8340).

**SUPPLEMENTARY INFORMATION:**

### Background

Designated ports are the cornerstone of the process by which the Fish and Wildlife Service (Service) regulates the importation and exportation of wildlife in the United States. With limited exceptions, all fish or wildlife must be imported and exported through such ports as required by section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f). The Secretary of the Interior is responsible for designating these ports by regulation, with the approval of the Secretary of the Treasury after notice and the opportunity for public hearing.

On January 4, 1974, the Service promulgated a final rule designating eight Customs ports of entry for the importation and exportation of wildlife (39 FR 1158). A ninth port was added on September 1, 1981, when a final rule was published naming Dallas/Fort Worth, Texas a designated port (46 FR 43834). On March 15, 1990, a final rule was published naming Portland, Oregon as the tenth designated port of entry (55 FR 9730). An eleventh port was added on May 20, 1992, when the final rule was published naming Baltimore, Maryland as a designated port (57 FR 21355).

A proposed rule, including a notice of public hearing was published in the **Federal Register** of November 12, 1993 (58 FR 59978).

### Need for Final Rulemaking

Containerized air and ocean cargo has become the paramount means by which both live wildlife and wildlife products are transported into and out of the United States. The use of containerized cargo by the airline and shipping industries has compounded the problems encountered by the Service and by wildlife importers and exporters in the Boston area. In many instances, foreign suppliers will containerize entire shipments and route them directly to Boston. If, upon arrival, the shipment contains any wildlife, those items must be shipped under Customs bond to a designated port for clearance. In most cases, this has involved shipping wildlife products to New York, New York, the nearest designated port, but reshipment has been both time consuming and expensive. To alleviate this problem, Boston importers and exporters have attempted to direct entire shipments, even though they contain only a small number of wildlife items, to a designated port prior to their arrival at Boston. This method of shipment meets the current regulatory requirements of the Service; however, it is again time consuming and entails additional expense. It is also contrary to the increasing tendency of foreign suppliers to ship consignments directly to regional ports such as Boston. In addition, time is a key element when transporting live wildlife and perishable wildlife products. Without designated port status, business in Boston cannot import and export wildlife products directly, and consequently may be unable to compete economically with merchants in other international trading centers located in designated ports. With airborne and maritime shipments into and out of Boston steadily increasing, the Service has concluded that the port should be designated for wildlife imports and exports. Conferring this status on Boston serves not only the interests of business in the region, but will also facilitate the mission of the Service in two ways. First, clearance of wildlife shipments in Boston will relieve inspectors at the port of New York who are now handling cargo for both ports. Second, it will eliminate the need for the administrative processing of permits by the Regional office that are issued to Boston area importers who are able to qualify for those permits on the basis of demonstrated economic hardship. Also, Boston's growth as a major east coast port of entry combined with modernization of shipping routes, make it an essential commercial link to the New England area.

### Results of Public Hearing and Written Comments

Section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f), requires that the public be given an opportunity to comment at a hearing prior to the Secretary of the Interior conferring designated port status on any port. Accordingly, the Service held a public hearing on November 8, 1993, from 9 a.m. to 12 Noon. The hearing was held in the Massachusetts Port Authority, Maritime Department, Fish Pier East II, Northern Avenue, Boston, Massachusetts 02210. Seven persons presented oral and/or written testimony at the hearing, representing Maritime Department at the Massachusetts Port Authority, Advance Brokers, Boston Customs Broker and Freight Forwarders Association, Tower International, International Cargo Systems, and Liberty International. Most of the witnesses stated that shipping to New York or another designated port for inspections when small numbers of wildlife items are involved is detrimental to the economic well being of their clients. They felt that designation would allow their companies and their customers to become more competitive on both time and cost. The Boston Customs Brokers and Freight Forwarders Association had reviewed port inspection statistics and felt that the volume of shipments in Boston justifies designated port status as they are larger than some currently designated ports. International Cargo Systems, is a freight forwarder whose primary business involves seafood, is anticipating a 30 percent increase in business if Boston becomes a designated port. Liberty International complained

about the application process necessary to obtain a designated port exception permit. In their opinion, it is so time consuming that many potential importers will not deal in wildlife products simply to avoid the delays. The witnesses felt that designated port status would increase the numbers of potential users at the port of Boston.

One additional written comment submitted by MONITOR, on January 10, 1994, was received by the Service during the public comment period. The commenter opposed the designation of Boston as a port of entry because in the commenter's opinion the designation of a twelfth port for the importation and exportation of wildlife would spread the staff and finances of the U.S. Fish and Wildlife Service even thinner, diminishing the Service's effectiveness in wildlife law enforcement. The Service believes that this rule will not have a negative impact on other wildlife enforcement efforts nor reduce the detection of illegal shipments elsewhere by the placement of a wildlife inspector at Boston.

The Service also receives requests for wildlife identification assistance from other Federal Agencies such as U.S. Customs and the U.S. Department of Agriculture (APHIS) at Boston and Canadian border ports. While many of these locations are not part of the designated port area, it is important for wildlife inspection services to be available at such major international facilities when the need arises. This also relieves the burden of Service Special Agents in the Boston area who must take time from other investigational priorities to address inspection needs. This is particularly important during the migratory bird hunting season as waterfowl resource protection in the regional flyway is a priority.

**Required Determinations**

This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior (Department) has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As discussed above, opening Boston as a port of entry will have a slight economic benefit to the Boston area businesses. This action is not expected to have significant taking implications, as per Executive Order 12630. This rule does not contain any additional information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not contain any federalism impacts as described in Executive Order 12612. These final rule changes in the regulations in Part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 Department Manual and an Environmental Action Memorandum is on file at the U.S. Fish and Wildlife Service office in Arlington, Virginia. A determination has been made pursuant to Section 7 of the Endangered Species Act that this revision of Part 14 will not effect federally listed species.

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Section 2(a) and 2(b)(2) of Executive Order 12778.

*Authorship:* The primary author of this rule is Law Enforcement Specialist, Paul McGowan, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

**List of Subjects in 50 CFR Part 14**

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation and Wildlife.

**Regulation Promulgation**

For the reasons set out in the preamble, title 50, Chapter 1, Subchapter B of the Code of Federal Regulations is amended as set forth below.

## PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for Part 14 continues to read as follows:

**Authority:** 16 U.S.C. 705,712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 483(a).

2. Section 14.12 is amended by removing the word "and" at the end of paragraph (j), by removing the period at the end of paragraph (k) and adding in its place "; and", and by adding a new paragraph (l) to read as follows:

**§ 14.12 Designated ports.**

* * * * *

(l) Boston, Massachusetts.

Dated: May 23, 1994.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 94–15565 Filed 6–27–94; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

**[Docket No. 931199–4042; I.D. 062294A]**

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for pollock in Statistical Area 63 (between 147° and 154° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), June 22, 1994, until 12 noon, A.l.t., July 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Sloan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC in Statistical Area 63 is 12,505 metric tons (mt), as established by the 1994 final specifications (59 FR 7647, February 16, 1994) and modified in accordance with § 672.20(a)(2)(iv).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 second quarterly allowance of pollock TAC in Statistical Area 63 soon will be reached. The Regional Director established a directed fishing allowance of 11,800 mt, and has set aside the remaining 705 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 63 is prohibited, effective from 12 noon, A.l.t., June 22, 1994, until 12 noon, A.l.t., July 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

**Classification**

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 22, 1994.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 94–15544 Filed 6–22–94; 4:29 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 59, No. 123
Tuesday, June 28, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 53, 71, 82, 92, 94, and 161

[Docket No. 87-090-1]

RIN 0579-AA22

### Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to revise completely subpart A of part 82 of title 9, Code of Federal Regulations, concerning exotic Newcastle disease in birds and poultry, and psittacosis or ornithosis in poultry. We have reviewed part 82 as part of our ongoing review of existing regulations, and believe that a complete revision of subpart A is necessary. Revising the regulations would make them easier to understand, thereby increasing compliance with the regulations, and would make them more effective in preventing the interstate spread of these diseases. We are also proposing to amend parts 53, 71, 92, 94, and 161 of Title 9, Code of Federal Regulations, to reflect the amendments to part 82 we are proposing.

**DATES:** Consideration will be given only to comments received on or before August 29, 1994.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-090-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202-690-2817) to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. C.M. Groocock, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, USDA, room 746, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20872, (301) 436-8240.

**SUPPLEMENTARY INFORMATION:**

#### Background

*Part 82*

The regulations in 9 CFR part 82, subpart A, restrict the interstate movement of certain poultry, birds, and other items from premises and areas quarantined because of exotic Newcastle disease, and psittacosis or ornithosis.[1] These regulations are designed to prevent the interstate spread of these contagious, infectious, and communicable diseases of birds and poultry, which could devastate the United States poultry industry.

We have reviewed the exotic Newcastle disease and psittacosis/ornithosis regulations in accordance with our regulatory review plan, which provides for ongoing review of existing regulations. Based on this review, we believe a complete revision of these regulations is necessary.

We have also reviewed the regulations in 9 CFR part 82, subpart B, which provide for certain testing, restrictions on movement, and other restrictions on certain chickens, eggs, and other articles due to the presence of *Salmonella enteritidis*. These regulations were established in February 1990 [Docket No. 88-161, 55 FR 5576-5584] and were most recently amended in January 1992 [Docket No. 91-193, 57 FR 776-779]. These regulations are not being revised as part of this rulemaking.

We are proposing to revise the regulations in subpart A (referred to below as the regulations) to accomplish two goals. One goal is to make the regulations easier to understand, thereby increasing compliance with them. The other goal is to make the regulations more effective in preventing the interstate spread of *exotic Newcastle disease* and psittacosis/ornithosis.

[1] Psittacosis and ornithosis are two different names for the same disease. However, "psittacosis" commonly refers to the disease in humans and birds and "ornithosis" refers to the disease in poultry.

#### Psittacosis or Ornithosis

We are proposing to change the name of the disease "psittacosis or ornithosis" to "chlamydiosis." Since the time the regulations were last amended, accepted veterinary medical terminology has changed. The disease "psittacosis or ornithosis" is now generally referred to as "chlamydiosis." In this proposed rule, we will use the term "chlamydiosis" when referring to the disease referred to in the current regulations as "psittacosis or ornithosis."

#### Exotic Newcastle Disease

In current § 82.1, *exotic Newcastle disease* is defined as the exotic viscerotropic type of Newcastle disease, a contagious, infectious, and communicable disease of poultry. We are proposing to revise the definition of *exotic Newcastle disease* to include any velogenic Newcastle disease. ("Velogenic" refers to the severity of the strain of the virus in question.) Velogenic Newcastle disease is an acute, rapidly spreading, and usually fatal exotic viral disease of birds and poultry. If there were an outbreak of any velogenic Newcastle disease in this country, it would be treated in the same way as velogenic viscerotropic Newcastle disease.

Consistent with the change to the definition of *exotic Newcastle disease* we are proposing in part 82, we are proposing to amend 9 CFR parts 92, 94, and 161 to use the term "*exotic Newcastle disease*" instead of velogenic viscerotropic Newcastle disease (VVND), and are proposing to revise the definition of *Exotic Newcastle disease* in 9 CFR part 94 to make it consistent with the proposed definition in part 82.

#### Organizational Changes

In order to make the regulations easier to understand, we are proposing to reorganize them. Under our proposal, part 82 would be divided into three portions, instead of the current two. The first portion (proposed subpart A) would concern quarantines and other restrictions imposed only because of *exotic Newcastle disease* (END). The second portion (proposed subpart B) would concern restrictions imposed only because of chlamydiosis. Subpart C would contain the *Salmonella enteritidis* serotype *enteritidis* regulations.

The regulations in proposed subpart A would: (1) Set forth criteria for determining birds or poultry to be infected with, exposed to, or free from END; (2) explain how and when we would impose a quarantine; (3) list specific requirements for moving quarantined birds, poultry, and other items interstate; (4) explain how and when we would remove a quarantine; and (5) Set forth provisions regarding replacement birds and poultry.

The regulations in proposed subpart B would: (1) set forth general restrictions on the interstate movement of poultry infected with chlamydiosis and on the interstate movement of other items related to infected poultry; and (2) list requirements for cleaning and disinfecting premises, vehicles, and other equipment that are or that have been used in holding or moving poultry infected with chlamydiosis.

We are also proposing many other nonsubstantive and substantive changes to the regulations. These proposed changes, which are all intended to make the regulations more effective in preventing the interstate spread of *exotic Newcastle disease* and chlamydiosis, are discussed individually below. Some of these provisions are similar or identical with regard to both the END and the chlamydiosis regulations (proposed subparts A and B). Other changes are particular to the END regulations (proposed subpart A). In this preamble, we discuss first those provisions that are particular to proposed subpart A. We then discuss those provisions that are similar or identical in proposed subparts A and B.

**Provisions Particular to the END Regulations**

We are proposing to delete current § 82.2(a). This section states that "poultry, psittacine and mynah birds, and birds of all other species" are susceptible to END and, therefore, that "the provisions of [the regulations] shall be applicable in relation to such birds in the same manner and to the same extent as such provisions are applicable in relation to poultry." This language is not needed in our proposal, because we clearly specify which requirements apply to birds, to poultry, or to both birds and poultry.

**Task Force**

We are proposing to remove or replace all references to "task force" and "Director of the Task Force" in the regulations. In order to eradicate specific outbreaks of END, we have sometimes established task forces. However, because we do not always do so, the current regulations can be confusing.

The only references to task forces in the current regulations are in §§ 82.1 and 82.3 (a) and (b). Current § 82.1 contains definitions of *Director of the Task Force* and *Task Force*. Current § 82.1 also contains, in the definition of *infected group*, a requirement that the Director of the Task Force determine whether a flock or group of birds or poultry is infected with END. Paragraphs (a) and (b) of current § 82.3 provide that the Director of the Task Force may determine: (1) Whether birds, poultry, and premises are infected with END; and (2) whether diagnostic tests are necessary to determine if the birds or poultry are infected.

We propose to delete the definition of *infected group* from current § 82.1 and, because APHIS conducts its END program under a memorandum of understanding with the States, to provide in proposed § 82.2 that whether birds or poultry are infected with or exposed to END must be determined by either a Federal or a State veterinarian, rather than by the Director of the Task Force.

**Basis for Determining Infection With END**

In § 82.1 of the current regulations, the definition of *infected group* describes the methods that may be used to determine whether a flock or group of birds or poultry is infected with END. Footnotes to that definition describe these methods of determination in greater detail. In this document, we are proposing to delete the definition of *infected group*, to include the basis for determining whether birds or poultry are infected with END in proposed § 82.2, and to describe more specifically the factors that will be considered in making that determination.

We are proposing that the determination whether birds or poultry are infected with END would be based on one or more of the following factors: clinical evidence (signs, post-mortem lesions, and history of the occurrence of END); diagnostic tests; or epidemiological evidence (evaluation of clinical evidence and the degree of risk posed by the potential spread of END based on population and exposure factors, including evaluation of whether the birds and poultry have had the opportunity to be in contact with birds or poultry infected with END or with excrement from birds or poultry infected with END, or if they have shared feed or water with birds or poultry infected with END).

**Basis for Determining Exposure to END**

Under the current and the proposed regulations, birds and poultry determined to be exposed to END, and certain articles related to those birds and poultry, are subject to certain prohibitions and restrictions regarding their interstate movement. We are proposing to set forth in proposed § 82.2 more specific factors for determining exposure to END than those set forth in the definition of *exposed group* in § 82.1 of the current regulations. The determination of whether birds and poultry are exposed to END would be made by either a Federal or a State veterinarian and would be based on an evaluation of all related circumstances, including: the proximity of the birds or poultry to birds or poultry infected with END, to excrement from birds or poultry infected with END, and to other material touched by birds or poultry infected with END; the number of birds or poultry infected with END to which the birds or poultry were exposed; the species involved; the virulence of the END to which the birds and poultry were exposed; and the length of time the birds or poultry were in contact with birds or poultry infected with END, and to material touched by birds and poultry infected with END. Birds or poultry determined to be exposed to END would continue to be treated as exposed unless they are subsequently determined to be infected with END or until either a Federal veterinarian or a State veterinarian finds them to be free of END, based on the factors used to determine that birds or poultry are infected with END.

We are also proposing to include in § 82.1 a definition of *exposed* that would read as follows:

> At risk of developing END because of association with birds or poultry infected with END, excrement from birds or poultry infected with END, or other material touched by birds or poultry infected with END, or because there is reason to believe that association has occurred with END or with vectors of END, as determined by either a Federal veterinarian or a State veterinarian.

**Quarantines**

In current § 82.3, we refer to the quarantining of "premises" containing birds and poultry that are infected with or have been exposed to END. However, elsewhere in the regulations, we refer to quarantined "areas" rather than premises. We believe this discrepancy in terms is confusing. The intent of the quarantine provisions in the current regulations is that areas to be quarantined may include premises, but are not limited to specific premises. In this proposed rule, we would clarify our

intent by referring to quarantined areas, rather than quarantined premises. Also, rather than providing that premises where either infected or exposed birds or poultry exist will be quarantined, as in the current regulations, we are proposing to provide that any area where birds or poultry infected with END are located will be quarantined. We would delineate these areas in such a way that they would be sufficient, as determined by epidemiological evaluation, to include all known infected and exposed birds.

Under § 82.3 (a)(2) and (b)(3) of the current regulations, there are certain requirements that must be met before we will remove a quarantine. If we have quarantined premises because of infected birds and poultry, one of the requirements for removal of the quarantine is the destruction of all the birds and poultry on the premises where the infected birds or poultry are located. However, if we have quarantined premises because of the presence of exposed birds and poultry, the exposed birds and poultry do not have to be destroyed.

Under § 82.14 of the proposed regulations, all birds and poultry in an area quarantined because of the presence of birds or poultry infected with END would not have to be destroyed—rather, only those birds and poultry determined to be infected with END. Improved testing technology now makes it easier to determine which birds or poultry in a quarantined area are actually infected with END. Therefore, the total number of birds and poultry that would have to be destroyed could be lower than under the current regulations.

**Interstate Movement of Various Articles**

Both the current regulations (§ 82.4) and the proposed regulations (§§ 82.4 through 82.10) restrict the interstate movement of various articles, including birds and poultry, that could carry and spread the END virus. We are proposing not only to reorganize and rewrite this material to make it clearer and easier to follow, but we are also proposing to make substantive changes in the restrictions.

Current § 82.4 prohibits the interstate movement from any quarantined area of poultry and birds that are not being moved to a Federally inspected slaughtering establishment, and also prohibits the interstate movement from any quarantined area of hatching eggs, carcasses, parts of carcasses, and litter. We propose to replace this general prohibition with a list of specific articles prohibited from being moved interstate from a quarantined area (see proposed § 82.4(a)). We propose to prohibit: (1) live birds and poultry infected with or exposed to END; (2) dead birds and dead poultry, including any parts of the birds and poultry, that are infected with END; (3) any eggs from birds or poultry infected with END; (4) hatching eggs from birds or poultry exposed to END; and (5) litter and manure from birds and poultry infected with END. This list does not include some articles that are prohibited under the current regulations—*viz*, carcasses and parts of carcasses of birds and poultry in a quarantined area that are not known to be infected with END, and hatching eggs from birds and poultry in a quarantined area that are not known to be either infected with or exposed to END. We believe that the restrictions we are proposing to place on the interstate movement of these articles from a quarantined area (discussed below) would allow them to be moved interstate without significant risk of spreading END.

Additionally, we are proposing to specify in § 82.4(c) that the regulations would not apply to the interstate movement of birds, poultry, and other articles from a quarantined area if the interstate movement is made by the United States Department of Agriculture for purposes of research or diagnosis. We believe this provision is necessary to allow the Department to efficiently diagnose an outbreak of END and to conduct research relating to END.

**Interstate Movement of Live Birds**

The current regulations in § 82.4(c) allow the interstate movement from quarantined areas of birds that are "personal pets" and that are not known to be infected with or exposed to any communicable disease of poultry. We are proposing to set forth these provisions in proposed § 82.5(a), with several changes. The current regulations require in several places that the birds be in the owner's "possession" or "personal possession." We believe this wording does not clearly convey our intent. We do not consider it necessary for the birds to be in physical proximity to the owner at all times. Rather, we consider it necessary for the owner to be responsible for the location and disposition of the birds. Therefore, we are proposing to replace the terms "possession" and "personal possession" with the requirement that the birds be under the owner's "ownership and control."

The current regulations require "immediate" notification of Federal or State officials if any pet birds that have been moved interstate from a quarantined area show signs of disease or die. We believe the term "immediate" might be confusing, and, therefore, are proposing that the notification be made within 24 hours of the bird's dying or showing clinical signs of sickness. We believe that 24 hours allows a reasonable period of time for notification, without creating a significant risk that the disease will spread during that period.

**Interstate Movement of Live Poultry**

The current regulations restrict the interstate movement of live poultry from a quarantined area (see current § 82.4(a)), and require that they be moved to a Federally inspected slaughtering establishment for "immediate" slaughter. We are proposing to amend these requirements (see proposed § 82.5) to extend this provision to birds as well as poultry. While in most cases birds other than poultry would not be moved to slaughter, such movement could occur in the case of ratites (e.g., ostriches), which can be used commercially after slaughter.

We are also proposing to require that the birds or poultry be accompanied by a permit and be slaughtered within 24 hours of arrival at the recognized slaughtering establishment. Shipments of poultry normally arrive at slaughtering facilities at night or early in the morning. (Currently, birds other than poultry are not being shipped to slaughter.) They are kept under cover until the facility can handle them in turn. We believe that 24 hours provides the facility with a reasonable amount of time to slaughter birds or poultry moved there, without posing a significant risk of disease spread. Allowing a lengthier period of time before slaughter would unnecessarily increase the risk of END contamination of personnel and equipment at the slaughtering establishment, and thus increase the risk that END would be carried outside the establishment.

We are also proposing to require that the shipment of birds or poultry be covered in such a way so as to prevent feathers and other debris from blowing or falling off the means of conveyance. Additionally, we are proposing to require that, except for emergencies, the birds and poultry not be unloaded until arrival at the destination listed on the permit. We would consider events such as accidents, vehicular failure, or natural disasters to be emergencies. We believe that each of these provisions is necessary to guard against the possibility of disease spread while the birds or poultry are being transported.

**Interstate Movement of Dead Birds and Dead Poultry**

The current regulations in § 82.4 prohibit the interstate movement from a quarantined area of carcasses and parts of carcasses of birds and poultry, including birds and poultry that are not known to be infected with END. We believe that this provision is unnecessarily restrictive, and that carcasses and parts of carcasses of birds and poultry not known to be infected with END can be moved interstate under certain conditions without an undue risk of disease spread. We are therefore proposing to allow such movement, as described below.

As noted in the preceding paragraph, the current regulations refer to "carcasses and parts of carcasses." We believe that the term "carcasses" might give the impression that only dressed carcasses are being referred to, such as those handled at slaughtering establishments. In some cases in this proposed rule, that is what we are referring to. In other cases, however, we are referring to any dead birds or poultry, whether they have been dressed or not.

To avoid confusion as to what we are referring to, in this proposed rule we use the wording "dead birds and dead poultry, including any parts of the dead birds and dead poultry," when all dead birds and dead poultry, including dressed carcasses, are being referred to. We use the term "dressed carcasses" when the intent is to limit the provisions to birds and poultry that have been eviscerated, with heads and feet removed.

To be moved interstate, dead birds and dead poultry that are not known to be infected with END and that are intended for disposal, including any parts of the dead birds and dead poultry, would have to be accompanied by a permit, the dead birds and dead poultry would have to be covered in such a way as to prevent feathers and other debris from blowing or falling off the means of conveyance, and the dead birds and dead poultry would have to be either moved under official seal or accompanied by a Federal representative. *Official seal* would be defined in § 82.1 as a serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, that forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

The proposed regulations would not allow the unloading of the dead birds and dead poultry until their arrival at the destination listed on the permit, and the dead birds and dead poultry would have to be moved to the destination listed on the permit without any stops, except for normal traffic conditions. The dead birds and dead poultry would have to be disposed of by rendering, incineration, composting, burial, or other methods approved by the Administrator as being adequate to prevent the dissemination of END, within 24 hours of the loading for shipment of the birds and poultry. A copy of the permit that accompanied the dead birds and dead poultry interstate would have to be submitted so that it is received by both the State animal health official and the Veterinarian in Charge in the State of destination within 72 hours of the arrival of the dead birds and dead poultry at the destination listed on the permit.

The requirements for the interstate movement of dressed carcasses would be largely the same as those for the interstate movement of other dead birds and dead poultry, with the following differences: (1) The dressed carcasses would have to be from birds and poultry slaughtered in a recognized slaughtering establishment; (2) the requirement that the means of conveyance be covered so as to prevent feathers and other debris from blowing or falling off would not apply to dressed carcasses; and (3) the disposal requirements described above for other dead birds and dead poultry would not apply to dressed carcasses, which are intended for consumption.

**Interstate Movement of Manure and Litter**

Current § 82.4(e) provides for the interstate movement from a quarantined area of manure from poultry or birds that are not known to be infected with END. These provisions include requirements for heating the manure and sealing it in an airtight container. Current § 82.4(e) also requires the submission to a Federal inspector of a declaration that provides information regarding the shipment of manure. We are proposing to retain the requirements of current § 82.4(e), and to set them forth in proposed § 82.7, with several changes.

First, we would extend the provisions that currently apply to shipments of manure to include litter as well. In proposed § 82.1, we would define *litter* as "material that is used to collect and absorb bodily wastes from birds or poultry." This material, which commonly consists of wood shavings or a similar material, cannot be easily separated from the bodily wastes. Second, we would require that shipments of manure and litter be accompanied by a permit.

**Interstate Movement of Hatching Eggs**

The current regulations in § 82.4 prohibit the interstate movement of hatching eggs from quarantined areas, except for specific movements allowed by APHIS upon request and under special conditions. We believe, however, that it is possible to establish general conditions under which hatching eggs from birds and poultry not known to be infected with or exposed to END can be moved interstate from a quarantined area without a significant risk of spreading END. Under these conditions, set forth in proposed § 82.9, the hatching eggs would have to be accompanied interstate by a permit. The proposed regulations would require that a copy of the permit be submitted so that it is received by both the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the hatching eggs at premises designated jointly by the Veterinarian in charge and the State animal health official. The hatching eggs would have to be held at this designated premises from the time of arrival until hatched, and the birds and poultry from the hatching eggs would have to remain at the designated premises for not less than 30 days following hatching. During this holding period, the eggs and any birds or poultry hatched from the eggs would be subject to any inspections, disinfections, and tests as may be required by the Administrator to determine their freedom from END.

**Interstate Movement of Eggs Other Than Hatching Eggs**

The regulations currently require table eggs to be washed and sanitized for processing before they are moved interstate from an area quarantined because of END. (See current § 82.4(b).) We propose to clarify this requirement in several ways. First, we propose in proposed § 82.8 to amend the requirement so that it refers to eggs, other than hatching eggs, from birds and poultry in a quarantined area that are not known to be infected with END. Second, we propose to require that the eggs be cleaned and sanitized in accordance with regulations issued by the Agricultural Marketing Service, as set forth in 7 CFR part 59. These provisions are clearer and more specific than our current requirement that the eggs be "washed and sanitized." They are the industry standard for cleaning eggs, and are suitable for eggs from quarantined areas. Also, the provisions in 7 CFR part 59 include a requirement

that the eggs be sanitized using a solution containing available chlorine of between 100 and 200 ppm. This solution would kill any END virus.

We would also require that the eggs that are being moved be packed either in flats or cases that have not been used before, or used plastic flats or cases that were cleaned and disinfected, since last being used, in accordance with the cleaning and disinfection provisions set forth in 9 CFR part 71. Additionally, we are proposing to require that any containers intended for reuse after arriving at a facility be cleaned and sanitized before being returned to premises where birds or poultry are kept.

**Interstate Movement of Equipment**

Current § 82.4(d) allows the movement of metal and hard plastic coops interstate from a quarantined area if those items are first cleaned and disinfected under the supervision of a Federal or State inspector. Based on our experience enforcing the regulations, we believe it is necessary to enhance our monitoring and tracking capabilities by expanding the criteria that would have to be met before metal and hard plastic coops may be moved interstate from a quarantined area. We would set forth these criteria in proposed § 82.10. Additionally, in proposed § 82.10 we would extend these requirements to cages, containers, troughs, vehicles, and other equipment used for birds, poultry, eggs, manure, and litter from a quarantined area. These items can be cleaned and disinfected to destroy the END virus as effectively as can metal and hard plastic coops, using the same cleaning and disinfecting methods. For such items to be moved interstate, they would have to be accompanied by a permit; they would have to be cleaned and disinfected in accordance with 9 CFR part 71; the equipment would have to be inspected by a Federal or State representative after it was cleaned but before it was disinfected; and it would have to be disinfected in the presence of a Federal or State representative with a disinfectant listed in 9 CFR part 71.

We are proposing to add like requirements for cleaning and disinfecting these items after they have been used to move birds, poultry, eggs, manure, or litter interstate from a quarantined area. Proposed § 82.10(b)(1) would require that the equipment be cleaned and disinfected at the place where it is unloaded or otherwise used, within 2 hours after unloading or use. This 2 hour time limit is proposed to provide a person with a reasonable time in which to complete the cleaning and disinfection. We recognize that in some cases such locations may not have the facilities necessary to readily carry out the required cleaning and disinfection. Therefore, we would provide in proposed § 82.10(d), that if the place where cleaning and disinfection would otherwise be required has no facilities for cleaning and disinfecting, the items may be moved to a place where facilities are available for cleaning and disinfection, provided a Federal representative or State representative has determined that such movement would not cause a risk of the spread of END.

Under our proposal, the requirements described in the preceding paragraph would not apply to equipment used by or to move pet birds moved interstate. We believe that the proposed conditions governing the movement of pet birds interstate would be adequate to ensure that the pet birds so moved pose an insignificant risk of being infected with END.

**Other Interstate Movements**

The current regulations provide, at § 82.4(f), that the Deputy Administrator may allow, under special conditions, the interstate movement of any poultry not known to be infected with END, even if they could not otherwise be moved under the regulations. However, the current regulations do not allow for similar movement of articles other than poultry. We believe that the regulations should allow for the movement of articles other than poultry that could be moved without risk of spreading END, but that would otherwise be prohibited movement under the regulations. Therefore, we are proposing to expand this provision to provide for the interstate movement of any restricted articles, if the Administrator determines that the articles can be moved without spreading END. (See proposed § 82.12. See also discussion in this document under "Internal Agency Policy.") For these articles to be moved interstate, they would have to be accompanied by a special permit, as we explain below under the heading "Permits and Special Permits."

Current § 82.4(f) also contains material pertaining to agency management that the Administrative Procedure Act does not require us to publish in our regulations. We are therefore proposing to delete the statement that the Deputy Administrator will notify State officials when a permit is granted.

**Removal of Quarantines**

The current regulations (current § 82.3(a)(2)(i)) require the disposal of all birds and poultry in the quarantined area that are infected with END, before we will remove the quarantine. In proposed § 82.14, we are proposing that all infected birds in the quarantined area that have been euthanized, and any other birds and poultry that died of any other cause other than slaughter, must be disposed of by specified means. This would help ensure that the carcasses of all birds and poultry infected with END, whether the birds and poultry were euthanized or died of the disease itself, are disposed of in such a way as to prevent the dissemination of END.

Current § 82.3 requires that the carcasses of the birds and poultry be destroyed, buried, incinerated, or otherwise properly disposed of as the Deputy Administrator may direct. We are proposing to make several changes in this requirement. First, we are proposing to allow rendering or composting of the dead birds and poultry. Both rendering and composting destroy the END virus. Second, we are proposing to delete the words "otherwise properly disposed of as the Deputy Administrator may direct." The exact meaning of this phrase is not clear. Under the proposed regulations, if a person wants to dispose of dead birds or poultry, manure, or eggs from infected birds or poultry by using a method the regulations do not allow, the person may be able to obtain a special permit to do so. (See "Permits and Special Permits" below, regarding proposed § 82.12.)

The current regulations do not include any requirements for disposing of eggs, manure, and litter from infected and exposed birds and poultry before we remove a quarantine. However, each of these items can potentially spread END. Therefore, we are proposing to amend the regulations to ensure that these possible sources of END infection are eliminated before we remove a quarantine. In proposed § 82.14(d), we would require either the burial, reduction to ashes by incineration, or rendering of all eggs from birds and poultry infected with or exposed to END. In proposed § 82.14(e), we would require that all manure and litter from birds and poultry infected with or exposed to END be buried, reduced to ashes by incineration, composted, or spread on a field and turned under. All of these methods of disposing of eggs, manure, and litter would destroy the END virus.

We are proposing to add specific requirements to the regulations for the disposal of articles by burial, composting, or spreading and turning under. As noted above, burial would be an option for the disposal of birds, poultry, eggs, manure, and litter. If

burial is used for disposal, it would have to be done in the quarantined area in a location that meets all United States Environmental Protection Agency, State, and local requirements for landfills. The articles would have to be buried at least 6 feet deep and covered at the time of burial with soil. Requiring burial at least 6 feet deep would prevent most burrowing animals from coming in contact with the buried material.

Composting would be an option for the disposal of birds and poultry infected with END, and for the disposal of manure produced by and litter used by birds or poultry infected with or exposed to END. Because of the difference in the nature of the material being composted, the procedures for composting birds and poultry would differ from those for composting manure and litter.

To compost dead birds and poultry infected with END, the procedures set forth in § 82.14(c)(2) of this proposed rule would have to be followed. These procedures would require the creation of a layered mixture consisting of manure cake (litter and manure); a carbon source such as straw, peanut hulls, or wood chips; and the birds or poultry. The mixture would need to sit for two 30-day heating cycles, during which its internal temperature would need to reach at least 140° F (to kill fly larvae and disease organisms). After the first 30-day heating cycle, the compost pile would have to be turned over and aerated, to provide the oxygen necessary for the composting bacteria. Following the second 30-day heating cycle, the mixture would need to be covered with a material that will prevent penetration of air and moisture for an additional 30-day period. The compost pile would have to be at least 50 yards from any building or pen where poultry or birds are housed, to guard against wind-borne transmission of material that might be contaminated with END, and would have to be inaccessible to any poultry and birds. This requirement would also be applied to disposal of manure and litter by spreading and turning under.

To compost manure and litter, the procedures set forth in § 82.14(e)(2) would have to be followed. The manure and litter would have to be placed in rows 3 to 5 feet high and 5 to 10 feet at the base, be kept moist, and be kept covered. The internal temperature of the compost pile would need to rise to at least 140° F, and the manure or litter would have to be mixed every 10 to 15 days, in order to provide sufficient oxygen to the composting bacteria. The composted manure or litter could not be utilized for at least 30 days from the time the 140° F temperature is reached.

Spreading and turning under would be an option only for the disposal of manure and litter. If the manure and litter is spread on a field and turned under, the field would have to be in the quarantined area. The manure and litter would have to be turned over within 24 hours of being spread on the field, and be left undisturbed for at least 30 days after being turned under, to ensure that the END virus has become inactive. We believe a 24-hour time period for turning the manure and litter over would be short enough to guard against transmission of the END virus, while providing a practicable amount of time for completing the process of turning under.

The current regulations do not require cleaning and disinfection of cages, equipment, or similar articles that have been used for END-infected birds and poultry. Since cages and other equipment that have been used to handle infected birds and poultry could spread END, we are proposing in proposed § 82.14(g) that, as a condition of removal of a quarantine, all cages, coops, containers, troughs, and other equipment used for birds or poultry infected with or exposed to END, or their excrement or litter, must either be reduced to ashes by incineration, or be cleaned and disinfected in accordance with 9 CFR part 71. If cleaning and disinfection is chosen, it would be required that the articles be inspected after cleaning, and before disinfection, by a Federal or State representative, and then be disinfected in the presence of a Federal or State representative. It would be required that a disinfectant listed in 9 CFR part 71 be used. The same cleaning and disinfecting procedures would be required for premises where birds or poultry infected with or exposed to END were located, to prevent the transmission of END from the premises to birds or poultry.

**Miscellaneous**

Footnote 6 to current § 82.4 states that we will give pet bird owners a copy of the agreement they sign and that it will contain the names and addresses of Federal and State officials in the State where they are taking their pet birds. This footnote also states that we will notify State officials in that State that the pet birds are being brought into that State. None of this material is necessary as part of the regulations. Addresses of Federal and State officials are available in local telephone directories. Because the statement that we will notify State officials relates to agency management, the Administrative Procedure Act does not require us to publish it in our regulations. We are therefore proposing to delete this material.

We are proposing to delete current § 82.6, which, among other things, requires the banding of certain psittacine birds moved interstate from California. On March 16, 1982, we published an interim rule in the **Federal Register** (47 FR 11243–11246, Docket No. 82–019), amending the regulations to add § 82.6. Then, on April 20, 1982, we published another interim rule in the **Federal Register** (47 FR 16772–16773, Docket No. 82–037) suspending the section until further notice. The reason for suspending the section was that we could not provide necessary inspection services. Although this section has been inactive since April 20, 1982, it has continued to appear in the Code of Federal Regulations. We believe this is confusing. In addition, we are still not able to provide the inspection services required by § 82.6. Therefore, we are proposing to delete this section.

*Changes Affecting Both the END and the Chlamydiosis Regulations*

Certain of the substantive changes we are proposing to current part 82, subpart A, apply to both the END and the chlamydiosis regulations. We discuss these proposed changes in the following paragraphs.

**Permits and Special Permits**

The current regulations in part 82, subpart A, regarding both END and psittacosis/ornithosis (chlamydiosis), do not require a permit for the interstate movement of restricted items, if the items are moved in accordance with the regulations. We are proposing to require that a permit accompany such movements (provisions regarding the issuance of permits are set forth in proposed §§ 82.11 and 82.23), and that a copy of the permit be received by the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the shipment at the destination listed on the permit.

An application for a permit would have to include: (1) The applicant's name and mailing address; (2) the name and mailing address of the person who would receive the birds, poultry, or other items; (3) the addresses of both the origin and destination of the shipment; (4) the number and types of birds, poultry, and other items intended for interstate movement; and (5) the reason for interstate movement.

In the case of interstate movement under the END regulations, the applicant for a permit would also be required to submit a declaration or affidavit listing the requirements in the

regulations for interstate movement of the items in question, and stating that the applicant will move the items interstate only if all of the listed requirements are met (§ 82.11(b)). This declaration or affidavit would help us determine whether to issue a permit, by demonstrating whether the applicant has the knowledge of the regulations necessary to comply with them. Due to the highly infectious nature of END and the high rate of mortality it causes among birds and poultry, we consider such knowledge a critical condition for the issuance of a permit.

We are also proposing in both the END and the chlamydiosis regulations to provide for special permits for the movement of restricted items interstate in any way or to any destination the regulations do not otherwise allow. Special permits would be issued in those relatively infrequent occasions when articles could be moved without the risk of disease spread under safeguards that are not specifically provided for in the regulations. As with permits, in the case of interstate movements, a copy of the special permit would have to be received by both the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the shipment at the destination listed on the special permit. A special permit would also be required for the disposal of items and the cleaning and disinfection of items, vehicles, and premises using a method not provided in the regulations. (Provisions regarding the issuance of special permits are set forth in proposed §§ 82.12 and 82.24.) We need to have information in our files showing when, where, and what restricted items are being moved interstate. We also need to have information in our files showing what items have been destroyed, or cleaned and disinfected, and the method used. This information is important in helping us trace disease outbreaks to their source and to enforce the regulations.

In connection with the proposed permit requirements, we are proposing regulations that would allow us to deny an application for a permit or special permit and to withdraw a permit or special permit after we have issued it. (See proposed §§ 82.13, and 82.25.) The Administrator could deny an application if he or she determines that the applicant is not complying with or could not comply with the regulations or any special conditions needed to prevent the dissemination of END or chlamydiosis, or, in the case of a special permit, that it is not required under the regulations.

Under the proposed regulations, the Administrator may withdraw a permit or special permit, orally or in writing, if he or she determines the person to whom the permit or special permit has been issued is violating either the regulations or some condition specified in the permit or special permit. The Administrator could withdraw the permit or special permit without advance notice if he or she determines that the public health, interest, or safety is threatened. The Administrator would then provide reasons in writing why he or she denied or withdrew the permit or special permit. The proposed provisions would also provide for an appeals process. In cases where there was a conflict as to any material fact, the person denied the permit or special permit, or from whom a permit or special permit is withdrawn, would be given an opportunity for a hearing with respect to the merits or validity of the denial or withdrawal.

**Cleaning and Disinfection**

The current regulations regarding both END and chlamydiosis also require the cleaning and disinfection of vehicles, premises, and accessories for various reasons. (See current §§ 82.3(a)(2)(ii), 82.4(d), and 82.5.) We propose to make several changes in all of these regulations. (See proposed §§ 82.10, 82.14, 82.21, and 82.22.)

First, we propose to replace the word "accessories," wherever it is used, with the word "equipment." We believe "equipment" is clearer.

Second, we are proposing to clarify which functions may be carried out by an accredited veterinarian. The current regulations have two provisions concerning cleaning and disinfecting of vehicles, premises, and equipment for END that specify who must supervise the work. (See current §§ 82.4(d) and 82.5(a).) Section 82.4(d) states that a Federal or State inspector must supervise. Section 82.5(a) states that a Federal or State inspector, or an accredited veterinarian, must supervise. There is no reason why these requirements should be different. END is not endemic to the United States. Should an outbreak occur, we and the States involved will handle it as an emergency, and send all needed personnel to the scene. Therefore, we are proposing to amend the requirements to provide that only a Federal or State representative may supervise cleaning and disinfection with regard to END. (See proposed §§ 82.10(c) and 82.14 (f), (g), and (h).)

It should be noted that there are similar regulations concerning cleaning and disinfecting for chlamydiosis. These regulations currently provide that a Federal or State inspector, or an accredited veterinarian, supervise cleaning and disinfecting. (See current §§ 82.5 (a), (b), and (c).) This difference between the END regulations and the chlamydiosis regulations exists because chlamydiosis occurs sporadically in the United States, and we handle outbreaks on a routine basis. This type of program may require that a great number of personnel be available throughout the country. Therefore, to ensure that personnel are available when and where they are needed, we provide in the proposed regulations that accredited veterinarians, as well as Federal representatives and State representatives, may supervise cleaning and disinfecting for chlamydiosis. The proposed regulations clarify what is meant by "supervise," as discussed in the following paragraph, but do not change who can perform the work.

The current regulations require a Federal or State representative (or, in the case of psittacosis/ornithosis (chlamydiosis), an accredited veterinarian) to "supervise" cleaning and disinfecting. It is not clear what "supervise" means. We believe that requiring a Federal or State representative (or, in the case of chlamydiosis, an accredited veterinarian) to inspect vehicles, premises, and equipment after they are cleaned, and to be present while they are disinfected, would ensure that the cleaning and disinfecting are thorough and, therefore, effective. Accordingly, we are including such provisions in the proposed regulations, instead of using the term "supervise."

**Definitions**

We are also proposing to revise the list of definitions that apply to current subpart A of part 82 (current § 82.1; proposed § 82.1 for proposed subpart A, END; and proposed 82.19 for proposed subpart B, chlamydiosis). We are proposing to revise some of the existing definitions to make them clearer and more exact. We are also proposing to remove some existing definitions and to add some new definitions to the definitions already existing in current subpart A. This is necessary because the terms we use in the proposed regulations are not all the same as the terms in the current regulations.

We are proposing to remove the definitions of: *Director of the task force, Deputy Administrator, exposed group, Federal inspector, infected group, psittacosis or ornithosis, State inspector,* and *Task Force.* In addition to the terms in current subpart A, except as noted above, we are proposing to include in

proposed § 82.1 definitions of: *Administrator, Animal and Plant Health Inspection Service (APHIS), dressed carcasses, exposed, Federal representative, Federal veterinarian, hatching eggs, infected, known to be exposed, known to be infected, litter, official seal, recognized slaughtering establishment, render, State representative,* and *State veterinarian.* In addition to those terms already defined in current § 82.1 for use in the psittacosis/ornithosis regulations, we are proposing to include in proposed § 82.19 definitions of: *Administrator, Animal and Plant Health Inspection Service (APHIS), chlamydiosis, Federal representative, Federal veterinarian, infected,* and *State representative.*

**Internal Agency Policy**

Also, in order to reflect internal agency policy, we refer in this proposal to the "Administrator" when discussing functions ascribed to the "Deputy Administrator" in the current regulations. For the same reason, we have replaced the term "Veterinary Services" in this proposal with the term "Animal and Plant Health Inspection Service."

**Obtaining Information**

The current regulations indicate in various places how to obtain forms, information, and help. In some cases, the names, addresses, or locations given are incorrect. We are therefore proposing to update these references, as necessary, to include the correct names, addresses, and locations.

*Part 53*

Part 53 of Title 9, Code of Federal Regulations, concerns, among other things, the payment of indemnity for poultry and materials destroyed because of contamination by or exposure to END. The definition of *disease* in 9 CFR 53.1 refers to exotic Newcastle disease as "presently existing in the States of California, Florida, New Mexico, and Texas." This reference is outdated. Currently END is not known to exist in any State. Therefore, we are proposing to revise the definition of *disease* in § 53.1 to remove this reference.

The definition of *disease* in § 53.1 also refers to "lethal avian influenza (a disease of poultry caused by any form of H5 influenza virus that has been determined by the Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania)." This description is outdated, and we are proposing to replace it with a description that reflects current understanding of the disease. We would replace the reference to "lethal avian influenza" with a reference to "highly pathogenic avian influenza" and would describe the disease as that caused by any influenza virus that results in not less than 75 percent mortality within 8 days in at least 8 healthy susceptible chickens, 4 to 8 weeks old, inoculated by the intramuscular, intravenous, or caudal airsac route with bacteria-free infectious allantoic or cell culture fluids.

We would also revise the definitions of *person* and *State* in § 53.1 to clarify our intent as to their meaning, and make nonsubstantive wording and format changes to the remainder of the definitions.

Finally, we would eliminate an unnecessary cross reference in § 53.2(b).

*Part 71*

Part 71 of Title 9, Code of Federal Regulations, contains general provisions regarding the interstate transportation of animals and animal products. The regulations in Part 71 contain a reference to psittacosis or ornithosis. We are proposing to amend this reference to use the updated name for the disease: chlamydiosis.

Part 71 also contains regulations concerning cleaning and disinfecting. Section 71.7 explains methods of cleaning and disinfecting means of conveyance, facilities, and premises. Section 71.10(a) lists "substances permitted for use in disinfecting cars, boats, other vehicles, and premises." Neither of these sections covers cages, coops, containers, troughs, and other equipment, although the cleaning and disinfectants listed are suitable and effective for cleaning and disinfecting them. The current regulations in part 82 (§§ 82.4(d), 82.5(b), and 82.5(c)) require coops, containers, troughs, and other "accessories" to be cleaned and disinfected with a disinfectant listed in § 71.10. We propose to retain this reference to part 71. Therefore, we are proposing to amend § 71.10 to state that the disinfectants listed in that section can be used on cages and other equipment. We are also proposing to amend the cleaning and disinfection instructions in § 71.7 to cover cages and other equipment.

*Part 92*

Part 92 of Title 9, Code of Federal Regulations, contains requirements for the importation of certain animals into the United States. Part 92 contains references to ornithosis. We are proposing to amend those references to use the updated name for the disease: chlamydiosis.

Also, the current heading for part 92 reads as follows: "Importation of Certain Animals and Poultry and Certain Animal and Poultry Products; Inspection and other Requirements for Certain Means of Conveyance and Shipping Containers Thereon." We are proposing to amend this heading to reflect the fact that part 92 also deals with the importation of birds, and to remove excess wording. As amended, the heading for part 92 would read as follows: "Importation of Certain Animals, Birds, and Poultry, and Certain Animal, Bird, and Poultry Products; Requirements for Means of Conveyance and Shipping Containers."

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. This proposed action may have a significant economic impact on a substantial number of small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential impacts. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

**Regulatory Authority**

In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination within the United States of communicable diseases of livestock and poultry, and to pay claims growing out of the destruction of animals. Animal health regulations promulgated by the Department under this authority include those regarding END and chlamydiosis in 9 CFR part 82, and those regarding payment of claims in 9 CFR part 53.

Background

*Chlamydiosis*

Sporadic outbreaks of chlamydiosis in commercial poultry flocks have occurred in the United States over the past decade. APHIS, working with State cooperators, has successfully eliminated

chlamydiosis on each occasion. This proposed rule includes only minor changes related to chlamydiosis, specifically the addition of a requirement for a permit or special permit to move certain items interstate. We believe that these documents are necessary to allow the Department to better monitor the interstate movement of the items moved. However, the economic impact from these requirements would be negligible.

*Statement of Need for Regulatory Changes Regarding END*

From the time the southern California END emergency eradication program reached its successful conclusion in 1974 (see discussion below), the U.S. poultry and egg industries have become increasingly vertically integrated. This vertical integration has led to further concentration of poultry and egg production in specific geographic regions of the United States. With large numbers of poultry facilities operating in close proximity to each other, there is an increased opportunity for another major END outbreak. Current END regulations were drafted prior to the increased level of industry concentration, and we believe they require revisions to reflect the changes that have taken place. Current value of the domestic poultry and egg industry is estimated to be approximately $14.9 billion. Therefore, we believe the proposed changes to the existing END regulations are necessary due to the dynamic nature of the disease and its continued potential to devastate an important sector of U.S. agriculture.

Exotic birds are capable of transmitting the END virus to commercial poultry and egg flocks. Under current provisions, APHIS routinely euthanizes entire shipments of imported birds when the END virus is detected. In the past two decades, the domestic exotic bird industry has changed. Domestic production has intensified for those exotic species that can be readily bred in captivity. Legal importation annually supplies the U.S. bird market with a significant number of exotic species. The estimated value of this industry ranges between $300,000 to $500,000 annually. The actual value of the exotic bird industry would be much higher if the value of smuggled shipments could be included in the total. Illegal importation of exotic bird species continues to be an avenue for the introduction of END into the United States.

**Proposed Rule Changes to END Regulations**

In the absence of an END outbreak, the proposed regulatory changes would have a negligible impact on the domestic poultry and exotic bird industries. Proposed END revisions would strengthen APHIS's ability to prevent the interstate spread of END in the event of a domestic outbreak, and in some cases relieve certain restrictions. The proposed changes include new requirements for removing an area from quarantine; specific provisions for moving pet birds that are not known to be infected with or exposed to END out of a quarantined area; new provisions regarding the interstate movement of manure and litter from a quarantined area; and new provisions regarding the interstate movement of cages, coops, and equipment from a quarantined area. A brief overview of the proposed END regulations is as follows:

*1.* Interstate movement from a quarantined area would be prohibited for each of the following: 1) live birds and poultry infected with or exposed to END; 2) eggs from birds or poultry infected with END; 3) hatching eggs from birds or poultry exposed to END; 4) litter used by or manure generated by birds and poultry infected with END; and 5) dead birds and poultry, including any parts of the birds and poultry, infected with END.

*2.* An area would be removed from quarantine when all: 1) birds and poultry infected with END in the quarantined area have been euthanized and all dead birds and poultry within the quarantined area have been buried, reduced to ashes by incineration, reduced to dust by composting, or rendered; 2) birds and poultry exposed to END have been found to be free of END: 3) eggs produced by birds or poultry infected with or exposed to END in the quarantined area have been buried, reduced to ashes by incineration, or rendered; 4) manure produced by or litter used by birds or poultry infected with or exposed to END in the quarantined area has been reduced to ashes by incineration, or has been buried, composted, or spread on a field and turned under; 5) vehicles with which birds and poultry infected with or exposed to END or their excrement or litter have had physical contact have been cleaned and disinfected; 6) cages, coops, containers, troughs, and other equipment used for birds or poultry infected with or exposed to END, or their excrement or litter, have been reduced to ashes by incineration or have been cleaned and disinfected in accordance with 9 CFR part 71; and 7) the premises where birds or poultry infected with or exposed to END were located have been cleaned and disinfected in accordance with 9 CFR part 71.

*3.* Replacement birds and poultry would not be allowed to be placed in quarantined areas until the Administrator decides that END has been eradicated and that replacement birds and poultry would not become infected with END.

*4.* Eggs, other than hatching eggs, from birds and poultry not known to be infected with END could be moved interstate from a quarantined area under the following conditions: 1) a permit has been obtained and the eggs are accompanied by the permit; 2) the eggs have been cleaned and sanitized in accordance with 7 CFR part 59; 3) the eggs are packed either in flats or cases that have not been used before, or in used plastic flats or cases that were first cleaned and sanitized in accordance with 9 CFR part 71, and any of the flats and cases intended for reuse are cleaned and sanitized in accordance with 9 CFR part 71 before being moved to a premises where birds or poultry are kept; 4) the eggs are moved interstate to a processing facility where they are inspected to ensure they are cleaned and sanitized; and 5) a copy of the permit is submitted to the State animal health official and the Veterinarian in charge for the State of destination.

*5.* Hatching eggs from birds and poultry not known to be infected with or exposed to END could be moved interstate from a quarantined area under the following conditions: 1) a permit is obtained and the hatching eggs are accompanied by the permit; 2) birds or poultry from the eggs are held in the State of destination for not less than 30 days after hatching, at a premises designated jointly by the Veterinarian in Charge and the State animal health official; and 3) a copy of the permit accompanying the hatching eggs is submitted so that it is received by both the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the hatching eggs at the premises where they are to be held.

*6.* Pet birds could be moved interstate from a quarantined area provided that, among other provisions: 1) an APHIS permit has been issued; and 2) the pet birds are not known to be infected with or exposed to END.

*7.* Interstate movement from a quarantined area would be permitted for each of the following only if specified requirements are met: 1) live birds and poultry, other than pet birds, that are not known to be infected with or

exposed to END; 2) manure and litter from birds and poultry exposed to END; 3) manure and litter from birds and poultry not known to be infected with or exposed to END; 4) new or properly disinfected cages, coops, containers, troughs, vehicles, or other equipment used to handle infected or exposed birds and poultry, and their eggs; 5) dead birds and poultry, including any parts of the birds and poultry, that are not known to be infected with END.

**Potential Economic Impacts**

The proposed regulations would enhance APHIS's ability to monitor interstate movement of birds and poultry from areas quarantined because of END. Domestic poultry, egg, and exotic bird operations would be impacted only in the event of an END outbreak. There has not been a major domestic outbreak of END since an epidemic in southern California in 1971–74. However, END is periodically detected in isolated pet bird populations. Smuggled shipments of exotic species are the source of most outbreaks of END. Historically, APHIS has euthanized all pet birds that are found within a store in which birds are infected with END. The proposed rule changes would enable APHIS to be more selective and destroy only those birds and poultry that have been diagnosed as being infected with END. We expect that the savings to the industry from this more selective euthanization would outweigh any additional restrictions that would be imposed by the proposed rule changes. Domestic entities would not be severely impacted by either the current regulations or the proposed rule unless an END outbreak occurs.

**Estimated Economic Impact of a Major END Outbreak**

Eliminating END requires the detection of the virus in a flock, appraisal, and rapid, humane destruction of the infected flocks. It also requires that all premises that contained infected or exposed flocks be cleaned and disinfected. Depopulation would not occur until an appraised value was determined and the owners had signed the appropriate forms.

At the time of the 1971 END outbreak in southern California, there were approximately 1,115 commercial poultry and bird flocks in that part of the State. Commercial flock populations ranged in size from approximately 1,000 to more than 3.4 million birds and poultry. The estimated population of birds and poultry in southern California's commercial operations totaled more than 38.9 million. The average poultry operation contained approximately 55,000 birds. In southern California, the poultry industry was dominated by layer operations that produced table eggs for markets in California and neighboring States. In addition to commercial flocks, there were approximately 39,960 backyard poultry flocks with a total population of approximately 1 million.

A national animal disease emergency was declared by the Secretary of Agriculture in March 1972, which placed the eight southernmost counties in California under quarantine. The last case of END was diagnosed in June 1973, and surveillance programs continued until July 1974. Eradicating END from the area required the destruction of nearly 12 million infected and exposed birds and poultry. Most of the birds and poultry depopulated were laying hens. The effort cost approximately $55 million. Approximately half ($27.5 million) was for indemnities paid to flock owners for poultry, birds, eggs, and supplies destroyed. Approximately 91 percent of the depopulated birds and poultry were commercial layers, followed by 6 percent for pullets and broilers, 1 percent each for turkeys and breeding poultry, and less than 1 percent each for pigeons, backyard aviaries, game birds, and exotic birds.

Between March 1972 and December 1987, the poultry and bird population in the original quarantined area decreased from approximately 38.9 million to 27.6 million. Conversely, the number of commercial flocks in the 1972 END quarantined area increased from approximately 1,115 to 1,856. The increased number of bird and poultry flocks since 1972 can be attributed to expansion of the exotic bird industry. Importers and producers of exotic birds are not as vertically integrated as poultry producers. More exotic bird operations also helped to account for decreases in average flock size since 1972. Additionally, increased urbanization in traditional poultry producing sections of southern California have forced many poultry operations to close or relocate.

APHIS estimates that if a similar END outbreak were to occur in southern California today, up to 7.8 million birds and poultry could be required to be depopulated, and indemnities totaling $22.3 million dollars would be paid to producers. Newly developed diagnostic techniques should enable APHIS to be more selective when euthanizing birds and poultry in areas quarantined because of END. Although this should result in the destruction of fewer birds and poultry, the actual potential impact of the proposed regulations is unknown.

**Estimated Economic Impact of an Isolated END Outbreak**

Under APHIS regulations, all imported birds are quarantined for a minimum of 30 days to prevent the introduction of foreign animal diseases, particularly END.

Exotic bird species have been imported into the United States primarily for use as pets for several decades. During fiscal year 1991, approximately 136 lots, totaling approximately 250,000 exotic birds, were legally imported into the United States. Only three lots were refused entry due to END. Two of these lots, totaling 827 birds, were euthanized, the third was returned to the country of origin. APHIS estimates that the values of the euthanized lots were approximately $8,000 and $19,500 respectively.

In addition to legal importation, exotic bird species are also smuggled into the United States. Birds are smuggled for a variety of reasons, such as the avoidance of quarantine costs and illegal importation of prohibited species. The inherent nature of smuggling makes reliable data impossible to obtain. However, APHIS estimates that the number of smuggled birds entering the United States ranges from 100,000 to 150,000 annually. Smuggling increases the likelihood that domestic birds and poultry could be exposed to END.

During fiscal year 1991, an END outbreak resulted in the destruction of approximately 120 birds. APHIS estimated the value of these euthanized birds to be approximately $40,000. Under the proposed regulations, APHIS would use updated diagnostic techniques to determine which birds have actually been infected with END. This should permit APHIS to be more selective when euthanasia is necessary. However, the actual potential effect of the proposed regulations on domestic exotic bird producers is unknown.

**Summary**

APHIS estimates that the proposed rule changes for END would, short of a major END outbreak, have a negligible impact on the daily activities of domestic poultry and egg producers, and on domestic producers and importers of exotic birds. If a major outbreak occurred and an eradication program were initiated, the proposed rule changes would enable APHIS to effectively prevent the interstate spread of END and eradicate END. Modern diagnostic techniques would enable APHIS to determine which birds have been infected by the END virus. This

would likely result in smaller quantities of euthanized birds and poultry in areas quarantined because of END. We believe that revisions to the END regulations are necessary to ensure that domestic poultry, egg, and exotic bird producers are protected against any potential END outbreak. APHIS believes that the proposed regulations would effectively deal with a disease outbreak, while at the same time imposing the minimum possible costs on affected entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, subpart V.)

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Ave. SW., Washington, DC 20250.

**National Environmental Policy Act**

Various potential issues that could be raised by this proposed rule are being considered in the context of a current environmental impact statement process. The provisions in this proposed rule would not be implemented until compliance with the National Environmental Policy Act and other relevant environmental statutes has been assured.

**List of Subjects**

*9 CFR Part 53*

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

*9 CFR Part 71*

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

*9 CFR Part 82*

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

*9 CFR Part 92*

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

*9 CFR Part 94*

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

*9 CFR Part 161*

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we propose to amend 9 CFR parts 53, 71, 92, 94, and 161, and to revise part 82 as follows:

## PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

1. The authority citation for part 53 would continue to read as follows:

**Authority:** 21 U.S.C. 111, 114, 114a; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 53.1 would be revised to read as follows:

**§ 53.1 Definitions.**

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animals.* Livestock, poultry, and all other members of the animal kingdom, including birds whether domesticated or wild, but not including man.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

*APHIS employee.* Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

*Bird.* Any member of the class *aves* other than poultry.

*Department.* The United States Department of Agriculture.

*Disease.* Foot-and-mouth disease; rinderpest; contagious pleuropneumonia; exotic Newcastle disease; highly pathogenic avian influenza (that disease caused by any influenza virus that results in not less than 75 percent mortality within 8 days in at least 8 healthy susceptible chickens, 4–8 weeks old, inoculated by the intramuscular, intravenous, or caudal airsac route with bacteria-free infectious allantoic or cell culture fluids); or any other communicable disease of livestock or poultry that in the opinion of the Secretary constitutes an emergency and threatens the livestock or poultry of the United States.

*Exotic Newcastle disease.* Any velogenic Newcastle disease. Exotic Newcastle disease is an acute, rapidly spreading, and usually fatal viral disease of birds and poultry.

*Inspector in charge.* An APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of disease.

*Materials.* Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and articles stored in or adjacent to barns or other structures.

*Mortgage.* Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

*Person.* Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

*Pet bird.* Any bird that is kept for personal pleasure and is not for sale.

*Poultry.* Chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl.

*Secretary.* The Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has been or may be delegated to act in the Secretary's stead.

*State.* Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

3. In § 53.2, paragraph (b), the words "as referred to in § 82.2(a) of this chapter, and" would be removed.

## PART 71—GENERAL PROVISIONS

4. The authority citation for part 71 would continue to read as follows:

**Authority:** 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 71.3 [Amended]**

5. In section 71.3, paragraph (a), the phrase "psittacosis or ornithosis" would be removed and "chlamydiosis" would be added in its place.

**§ 71.7 [Amended]**

6. In § 71.7, the heading would be revised to read *"Means of conveyance, facilities, premises, and cages and other equipment; methods of cleaning and disinfecting."*

7. In § 71.7, paragraph (c), the words "and alleys" would be removed and the phrase "alleys, cages, and other equipment" would be added in its place.

8. In § 71.10, the section heading and paragraph (a) introductory text would be revised to read as follows:

**§ 71.10 Permitted disinfectants.**

(a) Disinfectants permitted for use on cars, boats, and other vehicles, premises, and cages and other equipment are as follows:

* * * * *

9. The authority citation for part 82 would continue to read as follows:

**Authority:** 21 U.S.C. 111–113, 115, 117, 120, 123–126, 134a, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

10. Part 82 would be amended by revising the part heading, removing subpart A, redesignating subpart B as subpart C, and adding new subparts A and B to read as follows:

## PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

### Subpart A—Exotic Newcastle Disease (END)

Sec.



### Subpart B—Chlamydiosis in Poultry



### Subpart A—Exotic Newcastle Disease

**§ 82.1 Definitions.**

As used in connection with this subpart, the following terms shall have the meaning set forth in this section.

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Bird.* Any member of the class *aves* other than poultry.

*Dressed carcasses.* Carcasses of birds or poultry that have been eviscerated, with heads and feet removed.

*END.* Any velogenic Newcastle disease. END is an acute, rapidly spreading, and usually fatal viral disease of birds and poultry.

*Exposed.* At risk of developing END because of association with birds or poultry infected with END, excrement from birds or poultry infected with END, or other material touched by birds or poultry infected with END, or because there is reason to believe that association has occurred with END or vectors of END, as determined by either a Federal veterinarian or a State veterinarian.

*Federal representative.* An individual employed and authorized by the Federal government to perform the tasks required by this subpart.

*Federal veterinarian.* A veterinarian employed and authorized by the Federal government to perform the tasks required by this subpart.

*Hatching eggs.* Eggs in which birds or poultry are allowed to develop.

*Infected.* Affected by the virus or bacterium that causes the specified disease.

*Interstate.* From one State into or through any other State.

*Known to be exposed.* Determined by either a Federal veterinarian or a State veterinarian to be at risk of developing END because of association with birds or poultry infected with END, excrement from birds or poultry infected with END, or other material touched by birds or poultry infected with END, or because there is reason to believe that association has occurred with END or vectors of END, as determined by either a Federal veterinarian or a State veterinarian.

*Known to be infected.* Determined by either a Federal veterinarian or a State veterinarian to be affected by the virus or bacterium that causes the specified disease.

*Litter.* Material that is used to collect and absorb bodily wastes from birds or poultry.

*Moved.* Shipped, transported or otherwise moved, or delivered or received for movement, by any person.

*Official seal.* A serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, that forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

*Person.* Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

*Pet bird.* Any bird that is kept for personal pleasure and is not for sale.

*Poultry.* Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

*Recognized slaughtering establishment.* Any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act.

*Render.* Reduce, convert, or melt down by heating to a temperature of at least 230 °F. so that oil is removed.

*State.* Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

*State animal health official.* The State official responsible for livestock and poultry disease control and eradication programs.

*State representative.* An individual employed in animal health work and authorized by a State or political subdivision of a State to perform the tasks required by this subpart.

*State veterinarian.* A veterinarian employed and authorized by a State or

political subdivision of a State to perform the tasks required by this subpart.

*Veterinarian in charge.* A Federal veterinarian employed by the Animal and Plant Health Inspection Service and authorized by the Administrator to supervise and manage the animal health work of the Animal and Plant Health Inspection Service in a specified area of the United States.

**§ 82.2 Criteria for determining birds or poultry to be infected with, exposed to, or free from END.**

(a) The determination that birds or poultry are infected with END must be made by either a Federal veterinarian or a State veterinarian.[1] They will base that determination on one or more of the following factors: clinical evidence (signs, post-mortem lesions, and history of the occurrence of END); diagnostic tests;[2] or epidemiological evidence (evaluation of clinical evidence and the degree of risk posed by the potential spread of END based on population and exposure factors, including evaluation of whether the birds and poultry have had the opportunity to be in contact with birds or poultry infected with END or with excrement from birds or poultry infected with END, or if the birds and poultry have shared feed or water with birds or poultry infected with END).

(b) The determination that birds or poultry are exposed to END must be made by either a Federal veterinarian or a State veterinarian. They will base that determination on an evaluation of all related circumstances, including: the proximity of the birds or poultry to birds or poultry infected with END, to excrement from birds or poultry infected with END, and to other material touched by birds or poultry infected with END; the number of birds or poultry infected with END to which the birds or poultry were exposed; the species involved; the virulence of the END to which the birds or poultry were exposed; and the length of time the birds or poultry were in contact with birds or poultry infected with END, and to material touched by birds or poultry infected with END. Birds or poultry determined to be exposed to END will continue to be treated as exposed unless they are subsequently determined to be infected with END or until either a Federal veterinarian or a State veterinarian finds them to be free of END based on one or more of the factors listed in paragraph (a) of this section.

**§ 82.3 Quarantined areas.**

(a) Any area where birds or poultry infected with END are located will be designated as a quarantined area. A quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. Less than an entire State will be designated as a quarantined area only if the State enforces restrictions on intrastate movements from the quarantined area that are at least as stringent as this subpart.

(b) Any area designated as a quarantined area because of END will remain designated as a quarantined area until all of the requirements of § 82.14 have been met.

(c) The following areas are quarantined because of END: (Currently, no areas are quarantined because of END.)

**§ 82.4 General provisions.**

(a) *Prohibitions.* The following articles may not be moved interstate from a quarantined area:

(1) Dead birds and dead poultry, including any parts of the birds or poultry, that are infected with END;

(2) Litter used by or manure generated by birds or poultry infected with END;

(3) Any eggs from birds or poultry infected with END;

(4) Hatching eggs from birds or poultry exposed to END; and

(5) Live birds or live poultry infected with or exposed to END.

(b) *Restrictions.* The following articles may be moved interstate from a quarantined area only in accordance with this subpart:

(1) Live birds or live poultry not known to be infected with or exposed to END.

(2) Dressed carcasses of birds and poultry, and other dead birds and dead poultry, including any parts of the birds or poultry, that are not known to be infected with END;

(3) Litter used by or manure generated by birds or poultry not known to be infected with END;

(4) Eggs, other than hatching eggs, from birds or poultry not known to be infected with END;

(5) Hatching eggs from birds or poultry not known to be infected with or exposed to END; and

(6) Cages, coops, containers, troughs, vehicles, or other equipment used for birds, poultry, eggs, manure, or litter.

(c) *Exceptions.* This subpart does not apply to the interstate movement of birds, poultry, or other articles from a quarantined area if the interstate movement is made by the United States Department of Agriculture for purposes of research or diagnosis.

**§ 82.5 Interstate movement of live birds and live poultry from a quarantined area.**

(a) *Pet birds.* An individual may move his or her pet birds interstate from a quarantined area if the birds are not known to be infected with or exposed to END and:

(1) The birds are accompanied by a permit obtained in accordance with § 82.11;

(2) Epidemiological evidence, as described in § 82.2(a), indicates that the birds are not infected with any communicable disease;

(3) The birds show no clinical signs of sickness (such as diarrhea, nasal discharge, ocular discharge, ruffled feathers, or lack of appetite) during the 90 days before interstate movement;

(4) The birds have been maintained apart from other birds and poultry in the quarantined area during the 90 days before interstate movement;

(5) The birds have been under the ownership and control of the individual to whom the permit is issued for the 90 days before interstate movement;

(6) The birds are moved interstate by the individual to whom the permit is issued;

(7) The birds are caged while being moved interstate;

(8) The individual to whom the permit is issued maintains ownership and control of the birds and maintains them apart from other birds and poultry from the time they arrive at the place to which the individual is taking them until a Federal representative or State representative[3] examines the birds and determines that the birds show no clinical signs of END. The examination will not be less than 30 days after the interstate movement;

(9) The individual to whom the permit is issued allows Federal

[1] The location of Federal veterinarians and State veterinarians may be obtained by writing to the Administrator, c/o Emergency Programs Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, or by referring to the local telephone book.

[2] A copy of the protocols for END diagnostic tests may be obtained by writing to the Administrator, c/o Emergency Programs Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20872. The protocols are also found in "Recommended Uniform Diagnostic Procedures," published by the Committee of the American Association of Veterinary Laboratory Diagnosticians.

[3] The location of Federal representatives and State representatives may be obtained by writing to the Administrator, c/o Emergency Programs Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

representatives and State representatives to examine the birds at any time until they are declared free of END by either a Federal veterinarian or a State veterinarian;

(10) Within 24 hours of a bird's dying or showing clinical signs of sickness (such as diarrhea, nasal discharge, ocular discharge, ruffled feathers, or lack of appetite), the individual to whom the permit is issued notifies the Veterinarian in charge or the State animal health official [4] in the State to which the birds are moved; and

(11) The individual to whom the permit is issued submits copies of the permit so that a copy is received by the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the birds at the destination listed on the permit.

(b) *Other birds and poultry.* Except as provided for pet birds in paragraph (a) of this section, a person may move live birds and live poultry that are not known to be infected with or exposed to END interstate from a quarantined area only if:

(1) The birds and poultry are accompanied by a permit obtained in accordance with § 82.11;

(2) The birds or poultry are covered in such a way as to prevent feathers and other debris from blowing or falling off the means of conveyance;

(3) The birds or poultry are moved in a means of conveyance either under official seal or are accompanied by a Federal representative;

(4) Except for emergencies, the birds or poultry are not unloaded until their arrival at the destination listed on the permit required by paragraph (b)(1) of this section;

(5) The birds or poultry are moved interstate to a recognized slaughtering establishment; [5]

(6) The birds or poultry are slaughtered within 24 hours of arrival at the recognized slaughtering establishment; and

(7) The permit required by paragraph (b)(1) of this section is presented upon arrival at the recognized slaughtering establishment to a State representative or Federal representative. Copies of the permit must also be submitted so that a copy is received by the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of arrival at the recognized slaughtering establishment.

**§ 82.6 Interstate movement of dead birds and dead poultry from a quarantined area.**

(a) Except as provided in paragraph (b) of this section for dressed carcasses, dead birds and dead poultry, including any parts of the birds and poultry, that are not known to be infected with END may be moved interstate from a quarantined area only if:

(1) The dead birds and dead poultry are accompanied by a permit obtained in accordance with § 82.11;

(2) The dead birds and dead poultry are covered in such a way as to prevent feathers and other debris from blowing or falling off the means of conveyance;

(3) The dead birds and dead poultry are moved in a means of conveyance either under official seal or accompanied by a Federal representative;

(4) The dead birds and dead poultry are not unloaded until their arrival at the destination listed on the permit required by paragraph (a)(1) of this section;

(5) The dead birds and dead poultry are moved, without stopping, to the destination listed on the permit required by paragraph (a)(1) of this section, except for normal traffic conditions, such as traffic lights and stop signs;

(6) The dead birds and dead poultry are disposed of, within 24 hours after being loaded for interstate movement, by burial or composting in accordance with the procedures set forth in §§ 82.14 (c)(1) and (c)(2), or by rendering, incineration, or other means approved by the Administrator as being adequate to prevent the dissemination of END; and

(7) Copies of the permit accompanying the dead birds and dead poultry interstate are submitted so that a copy is received by the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the dead birds and dead poultry at the destination listed on the permit required by paragraph (a)(1) of this section.

(b) Dressed carcasses from birds and poultry that are not known to be infected with END may be moved interstate from a quarantined area only if:

(1) The dressed carcasses are from birds or poultry that were slaughtered in a recognized slaughtering establishment; [6]

(2) The dressed carcasses are accompanied by a permit obtained in accordance with § 82.11;

(3) The dressed carcasses are moved in a means of conveyance either under official seal or accompanied by a Federal representative;

(4) The dressed carcasses are not unloaded until their arrival at the destination listed on the permit required by paragraph (b)(2) of this section;

(5) The dressed carcasses are moved, without stopping, to the destination listed on the permit required by paragraph (b)(2) of this section, except for normal traffic conditions, such as traffic lights and stop signs; and

(6) Copies of the permit accompanying the dressed carcasses interstate are submitted so that a copy is received by the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the dressed carcasses at the destination listed on the permit required by paragraph (b)(2) of this section.

**§ 82.7 Interstate movement of manure and litter from a quarantined area.**

Manure generated by and litter used by birds or poultry not known to be infected with END may be moved interstate from a quarantined area only if:

(a) The manure and litter is accompanied by a permit obtained in accordance with § 82.11;

(b) The manure and litter has been heated throughout, in the quarantined area, to a temperature of not less than 175° F (79.4° C), and then placed either in a previously unused container or in a container that has been cleaned and disinfected, since last being used, in accordance with part 71 of this chapter; and

(c) The declaration or affidavit required by § 82.11(b) lists the location of the poultry or birds that generated the manure or used the litter, and the name and address of the owner of the poultry or birds that generated the manure or used the litter.

(d) Copies of the permit accompanying the manure and litter interstate are submitted so that a copy is received by the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the manure and litter at the destination listed on the permit.

**§ 82.8 Interstate movement of eggs, other than hatching eggs, from a quarantined area.**

(a) Eggs, other than hatching eggs, from birds or poultry not known to be

[4] The location of the Veterinarian in charge or the State animal health official may be obtained by writing to the Administrator, c/o Emergency Programs Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782, or by referring to the local telephone book.

[5] A list of recognized slaughtering establishments in any State may be obtained from a Federal representative, the State animal health official, or a State representative.

[6] See footnote 5.

infected with END may be moved interstate from a quarantined area only if:

(1) The eggs are accompanied by a permit obtained in accordance with § 82.11;

(2) The eggs have been cleaned and sanitized in accordance with 7 CFR part 59;

(3) The eggs are packed either in previously unused flats or cases or in used plastic flats or cases that were cleaned and disinfected, since last being used, in accordance with part 71 of this chapter;

(4) The eggs are moved to a facility where they are examined to ensure they have been cleaned and sanitized in accordance with paragraph (a)(2) of this section; and

(5) Copies of the permit accompanying the eggs interstate are submitted so that a copy is received by both the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the eggs at the facility.

(b) Any flats or cases intended for reuse after being used to move eggs interstate to a facility under this section must be cleaned and disinfected in accordance with part 71 of this chapter before being moved to a premises where birds or poultry are kept.

**§ 82.9 Interstate movement of hatching eggs from a quarantined area.**

Hatching eggs from birds or poultry not known to be infected with or exposed to END may be moved interstate from a quarantined area only if:

(a) The hatching eggs are accompanied by a permit obtained in accordance with § 82.11;

(b) Copies of the permit accompanying the hatching eggs are submitted so that a copy is received by both the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the hatching eggs at the premises described in paragraph (c) of this section; and

(c) The hatching eggs are held in the State of destination at a premises designated jointly by the Veterinarian in charge and the State animal health official from the time of arrival until hatch and the birds and poultry hatched from the eggs are held at the designated premises for not less than 30 days following hatch. During this holding period, the eggs and any birds or poultry hatched from the eggs are subject to any inspections, disinfections, and tests as may be required by the Administrator to determine their freedom from END.

**§ 82.10 Interstate movement of vehicles, cages, coops, containers, troughs, and other equipment from a quarantined area.**

(a) This section does not apply to cages, coops, or other containers or equipment used by or to move pet birds moved interstate in accordance with § 82.5(a).

(b) Vehicles, cages, coops, containers, troughs, and other equipment that have held or that have otherwise been used in a quarantined area in the handling of birds or poultry or their eggs, or for manure generated by or litter used by the birds or poultry, may be moved interstate from a quarantined area only if they are made of hard plastic or metal, and if the other conditions of this section are met.

(c) Before moving vehicles, cages, coops, containers, troughs, and other equipment interstate that have held or have otherwise been used in a quarantined area in the handling of birds, poultry, eggs, manure, or litter, and after using these items to move birds, poultry, eggs, manure, or litter interstate from a quarantined area, the vehicles, cages, coops, containers, troughs, and other equipment must be cleaned and disinfected in accordance with paragraphs (c)(1) through (c)(5) of this section:

(1) Clean and disinfect the vehicles, cages, coops, containers, troughs, and other equipment at the place where the birds, poultry, eggs, manure, and litter are unloaded or where the equipment is used, no more than 2 hours after the birds, poultry, eggs, manure, and litter are unloaded or the equipment is used;

(2) Clean the items in accordance with part 71 of this chapter;

(3) Have a Federal representative or State representative[7] inspect the items after they have been cleaned;

(4) Disinfect the items in the presence of a Federal representative or State representative; and

(5) Disinfect the items in accordance with part 71 of this chapter and by using a disinfectant as specified in part 71 of this chapter.

(d) If the place where the cleaning and disinfection would otherwise be required has no facilities for cleaning and disinfecting, the items may be moved to a place where facilities are available for cleaning and disinfecting, provided a Federal representative or State representative has determined that such movement will not cause a risk of the spread of END.

(e) Vehicles, cages, coops, containers, troughs, and other equipment that are moved interstate under this section must be accompanied by a permit obtained in accordance with § 82.11, and copies of the permit accompanying the vehicles, cages, coops, containers, troughs, and other equipment interstate must be submitted so that a copy is received by the State animal health official and the Veterinarian in charge[8] for the State of destination within 72 hours of the arrival of the vehicles, cages, coops, containers, troughs, and other equipment at the destination listed on the permit.

**§ 82.11 Issuance of permits.**

(a) Application for the permits required by this subpart to move interstate from a quarantined area birds, eggs, poultry, or other items requiring a permit under this part must be in writing. The application must be submitted to a Federal representative or State representative and must include the following:

(1) The applicant's name and mailing address;

(2) The name and mailing address of the person who will receive the birds, eggs, poultry, or other items;

(3) The addresses of both the origin and destination of the birds, eggs, poultry, or other items;

(4) The number and types of birds, poultry, eggs, and other items intended for interstate movement; and

(5) The reason for the interstate movement.

(b) In addition to the information required by paragraph (a) of this section, to obtain permits to move birds, poultry, eggs, manure, litter, cages, coops, containers, troughs, vehicles or other equipment interstate from a quarantined area, an applicant for a permit must submit to a Federal representative or State representative a declaration or affidavit listing the requirements of § 82.5 for live birds or live poultry, § 82.6 for dead birds and dead poultry, § 82.7 for litter or manure, § 82.8 for eggs other than hatching eggs, § 82.9 for hatching eggs, or § 82.10 for cages, coops, containers, troughs, vehicles, and other equipment, and stating that the applicant will move the items interstate only if all of the listed requirements are met.

**§ 82.12 Other interstate movements and special permits.**

(a) A special permit is required for the interstate movement of birds, poultry, or other items whose movement is restricted under this subpart, from a quarantined area in a manner or to a destination other than is specifically prescribed by this subpart, under special conditions determined by the

[7] See footnote 3 to § 82.5.

[8] See footnote 4 of § 82.5.

Administrator to be necessary to prevent the dissemination of END. A special permit is required for the disposal of dead birds or dead poultry that are infected with END, or manure generated by or eggs from birds or poultry infected with END, in a manner other than is specifically prescribed in this subpart, and for cleaning and disinfection carried out in a manner other than is specifically prescribed in this subpart, under special conditions determined by the Administrator to be necessary to prevent the dissemination of END. To apply for a special permit, contact the Administrator, c/o the Veterinarian in charge [9] for the State in which the birds, poultry, or other items are located. The Administrator may, at his or her discretion, issue special permits if he or she determines that the activity authorized will not result in the interstate dissemination of END.

(b) The special permit will list the name and address of the person to whom the special permit is issued, and the special conditions under which the interstate movement, disposal, or cleaning and disinfection may be carried out.

(1) For an interstate movement, the special permit will also include the following:

(i) The name and mailing address of the person who will receive the birds, poultry, or other items;

(ii) The addresses of both the origin and destination of the birds, poultry, or other items;

(iii) The number and type of birds, poultry, or other items to be moved interstate; and

(iv) The reason for the interstate movement.

(2) For destruction or cleaning and disinfection, the special permit will also include the following:

(i) The address of the place where the dead birds, dead poultry, manure, or eggs are located; and

(ii) The number and type of birds, poultry, or other items involved.

(c) For an interstate movement, a copy of the special permit must accompany the items moved, and copies must be submitted so that a copy is received by the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the birds, poultry, or other items at the destination listed on the special permit.

**§ 82.13 Denial and withdrawal of permits and special permits.**

(a) *Denial.* If the Administrator determines that the applicant for a permit or special permit is not complying with or could not comply with this subpart or any special conditions needed to prevent the dissemination of END, or, in the case of a special permit, that the special permit is not required under this subpart, the Administrator may deny the request for a permit or special permit. If the request is denied, the Administrator will send the applicant a written notice explaining why the permit or special permit was denied.

(b) *Withdrawal.* The Administrator may withdraw a permit or special permit, orally or in writing, if he or she determines the person to whom the permit or special permit has been issued is violating either this subpart or some condition specified in the permit or special permit. The Administrator may withdraw the permit or special permit without advance notice if he or she determines that the person to whom the permit or special permit has been issued is violating either this subpart or some condition specified in the permit or special permit in a way that threatens the public health, interest, or safety. The Administrator will send the person to whom the permit or special permit has been issued a written explanation of why the permit or special permit is to be or was withdrawn.

(c) *Appeals.* Denial or withdrawal of a permit or special permit may be appealed to the Administrator within 10 days after receipt of the written notice of denial or withdrawal. The appeal must be in writing [10] and must state all of the facts and reasons upon which the person relies to show that the permit or special permit was wrongfully denied or withdrawn. The Administrator will grant or deny the appeal, in writing, explaining all of the reasons for the decision, as promptly as circumstances allow. In cases where there is a conflict as to any material fact, the person denied a permit or special permit, or from whom a permit or special permit is withdrawn, shall be given an opportunity for a hearing with respect to the merits of the validity of the denial or withdrawal in accordance with rules of practice adopted for the proceeding.

**§ 82.14 Removal of quarantine.**

An area will be removed from quarantine only when all of the following requirements have been met:

(a) All birds and poultry exposed to END in the quarantined area have been found to be free of END;

(b) All birds and poultry infected with END in the quarantined area have been euthanized;

(c) All birds and poultry, including any parts of the birds and poultry, euthanized in accordance with paragraph (b) of this section, and all birds and poultry in the quarantined area, including any parts of the birds and poultry, that died from any cause other than slaughter, have been buried, reduced to ashes by incineration, rendered, or reduced to dust by composting;

(1) If the birds and poultry are buried, all birds and poultry infected with END must be buried in the quarantined area. The birds and poultry must be buried in a location that meets all United States Environmental Protection Agency, State, and local requirements for landfills. They must be buried at least 6 feet deep and be covered at the time of burial with soil;

(2) If the birds and poultry are composted, all birds and poultry infected with END must be composted in the quarantined area. The birds and poultry must be composted according to the following instructions:

(i) Place a 1-foot layer of litter and manure in a free-standing composter bin, unless the compost pile will be covered in accordance with paragraph (c)(2)(ii) of this section. Add a 6-inch layer of straw, peanut hulls, or wood chips. Add a layer of dead birds or dead poultry, leaving 6 inches between the carcasses and the bin walls. Add water sparingly and cover with 6 inches of a dry mixture of litter and manure. Repeat the layering process two more times and cap with a double layer of dry manure cake. After the bin is capped off and covered, monitor the temperature in the compost pile daily, using a 36-inch probe-type thermometer. The temperature of the compost pile must reach at least 140° F. After 30 days from the date the compost pile is created, turn over to aerate the entire mixture. Allow mixture to reach at least 140° F once again. After completion of the second cycle, the mixture must remain covered with any material that prevents penetration of air and moisture until spread or otherwise utilized. The composted material may not be spread or otherwise utilized until at least 30 days following completion of the second heating cycle.

(ii) Composting of birds and poultry may be accomplished outside of covered bins by following the layering and temperature requirements set forth in paragraph (c)(2)(i) of this section, then

[9] See footnote 4 to § 82.5.

[10] Written appeals should be sent to the Administrator, c/o Emergency Programs Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

covering the compost pile with tarpaulins or 6-mm polyethylene sheets anchored with tires or straw bales. The mixture must be kept moist. The final product may not be spread or otherwise utilized until at least 30 days following completion of the second heating cycle.

(iii) Composting of birds and poultry must be carried out at least 50 yards from any building or pen where poultry and birds are housed and be inaccessible to birds and poultry. Composted material may not be commingled with, or otherwise be brought into contact with, non-composted manure cake.

(d) All eggs produced by birds or poultry infected with or exposed to END in the quarantined area have been buried, reduced to ashes by incineration, or rendered. If the eggs are buried, the eggs must be buried in the quarantined area in a location that meets all United States Environmental Protection Agency requirements and all State and local requirements for landfills. The eggs must be buried at least 6 feet deep and be covered at the time of burial with soil;

(e) All manure generated by or litter used by birds or poultry infected with or exposed to END in the quarantined area has been reduced to ashes by incineration, or has been buried, composted, or spread on a field and turned under, as follows:

(1) *Burial.* If the manure or litter is buried, the manure and litter must be buried at least 6 feet deep and covered at the time of burial with soil. The manure and litter must be buried in the quarantined area in a location that meets all United States Environmental Protection Agency and State and local requirements for landfills;

(2) *Composting.* If the manure and litter is composted, the manure and litter must be composted in the quarantined area according to the following method: Place the manure and litter in rows 3 to 5 feet high and 5 to 10 feet at the base. The area where the manure, litter, and other material used in composting are placed must be such that there is no runoff from the composted material out of the area, no saturation into the ground, and no moisture, except for that required by this paragraph, onto the composted material from above. The composting area must be at least 50 yards from any building or pen where birds or poultry are housed and be inaccessible to birds and poultry. The manure and litter must be mixed so as to attain a carbon to nitrogen ratio of approximately 30:1, a moisture content of between 40 to 50 percent, and a supply of oxygen to the composted material. If a carbon source other than manure or litter is needed, wood chips, straw, or peanut hulls may be used. The manure and litter must be covered with tarpaulin or 6-mm polyethylene sheets, be anchored with tires or straw bales, and be mixed to ensure adequate ventilation every 10 to 15 days. The composted material must rise to a temperature of 140° F, as determined by use of a 36-inch probe-type thermometer. The composted material may not be spread or otherwise utilized for at least 30 days from the time the 140° F temperature is reached.

(3) *Spreading and turning under.* If the manure or litter is spread on a field and turned under, the field must be in the quarantined area, at least 50 yards away from any building or pen where poultry or birds are housed, and inaccessible to birds and poultry. The manure or litter must be turned under within 24 hours of being spread on the field, and the field must be left undisturbed for at least 30 days;

(f) All vehicles with which the birds or poultry infected with or exposed to END or their excrement or litter have had physical contact have been cleaned and disinfected in accordance with part 71 of this chapter. The vehicles have been inspected after cleaning, and before disinfection, by a Federal representative or State representative, and then have been disinfected in the presence of a Federal representative or State representative with a disinfectant listed in part 71 of this chapter;

(g) All cages, coops, containers, troughs, and other equipment used for birds or poultry infected with or exposed to END, or their excrement or litter have been reduced to ashes by incineration, or have been cleaned and disinfected in accordance with part 71 of this chapter. The items must be inspected after cleaning, and before disinfection, by a Federal representative or State representative, and then must be disinfected in the presence of a Federal representative or State representative, with a disinfectant listed in part 71 of this chapter; and

(h) The premises where birds or poultry infected with or exposed to END were located have been cleaned and disinfected in accordance with part 71 of this chapter. The premises have been inspected after cleaning, and before disinfection, by a Federal representative or State representative, and then have been disinfected in the presence of a Federal representative or State representative with a disinfectant listed in part 71 of this chapter.

**§ 82.15 Replacement birds and poultry.**

Birds and poultry that have been destroyed because of a quarantine for END may not be replaced by birds or poultry moved interstate into the quarantined area until the Administrator decides that END has been eradicated and that replacement birds or poultry will not become infected with END.

## Subpart B—Chlamydiosis in Poultry

**§ 82.19 Definitions.**

As used in connection with this subpart, the following terms shall have the meaning set forth in this section.

*Accredited veterinarian.* A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Bird.* Any member of the class *aves* other than poultry.

*Chlamydiosis.* A contagious bacterial disease of birds and poultry, characterized by respiratory and systemic infection. The disease is also known as psittacosis in psittacine birds and as ornithosis in poultry.

*Federal representative.* An individual employed and authorized by the Federal government to perform the tasks required by this subpart.

*Federal veterinarian.* A veterinarian employed and authorized by the Federal government to perform the tasks required by this subpart.

*Infected.* Affected by the virus or bacterium that causes the specified disease.

*Interstate.* From one State into or through any other State.

*Moved.* Shipped, transported or otherwise moved, or delivered or received for movement, by any person.

*Person.* Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

*Poultry.* Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

*State.* Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

*State animal health official.* The State official responsible for livestock- and poultry-disease control and eradication programs.

*State representative.* An individual employed in animal health work and authorized by a State or political subdivision of a State to perform the tasks required by this subpart.

*Veterinarian in charge.* A Federal veterinarian employed by the Animal and Plant Health Inspection Service and authorized by the Administrator to supervise and manage the animal health work of the Animal and Plant Health Inspection Service in a specified area of the United States.

**§ 82.20 General restrictions.**

The following items may not be moved interstate:

(a) Live poultry infected with chlamydiosis;

(b) Dead poultry that were infected with chlamydiosis when they died, and parts of dead poultry that were infected with chlamydiosis when they died; and

(c) Offal from poultry infected with chlamydiosis.

**§ 82.21 Vehicles, cages, coops, containers, troughs, and other equipment used for infected poultry.**

(a) Before moving vehicles, cages, coops, containers, troughs, and other equipment interstate that have held or have otherwise been used in the handling of poultry infected with chlamydiosis, and after using these items to move poultry infected with chlamydiosis interstate, the vehicles, cages, coops, containers, troughs, and other equipment must be cleaned and disinfected in accordance with paragraphs (a)(1) through (a)(5) of this section:

(1) Clean and disinfect the vehicles, cages, coops, containers, troughs, and other equipment at the place where the poultry are unloaded or where the equipment is used, no more than 2 hours after the poultry infected with chlamydiosis are unloaded or the equipment is used;

(2) Clean the items in accordance with part 71 of this chapter;

(3) Have a Federal representative, State representative,[1] or an accredited veterinarian, inspect the items after they have been cleaned;

(4) Disinfect the items in the presence of a Federal representative, State representative, or an accredited veterinarian; and

(5) Disinfect the items in accordance with part 71 of this chapter and by using a disinfectant as specified in part 71 of this chapter.

(b) If the place where the cleaning and disinfection would otherwise be required has no facilities for cleaning and disinfecting, the items may be moved to a place where facilities are available for cleaning and disinfecting, provided a Federal representative or State representative has determined that such movement will not cause a risk of the spread of chlamydiosis.

(c) Vehicles, cages, coops, containers, troughs, and other equipment moved interstate under this section must be accompanied by a permit obtained in accordance with § 82.23, and copies of the permit accompanying the vehicles, cages, coops, containers, troughs, and other equipment interstate must be submitted so that a copy is received by both the State animal health official and the Veterinarian in charge[2] for the State of destination within 72 hours of the arrival of the vehicles, cages, coops, containers, troughs, and other equipment at the destination listed on the permit.

**§ 82.22 Cleaning and disinfecting premises.**

Premises that contained poultry that were infected with chlamydiosis must be cleaned and disinfected in accordance with this section before any poultry are moved interstate onto the premises.

(a) The premises must be cleaned in accordance with part 71 of this chapter;

(b) After being cleaned, the premises must be inspected by a Federal representative, State representative, or an accredited veterinarian;

(c) After being inspected, the premises must be disinfected in the presence of a Federal representative, State representative, or an accredited veterinarian, in accordance with part 71 of this chapter, using a disinfectant listed in part 71 of this chapter.

**§ 82.23 Issuance of permits.**

(a) Application for the permit required by this subpart to move vehicles, cages, coops, containers, troughs, or other equipment interstate must be in writing, and must be submitted to a Federal representative or State representative. The application must include the following:

(1) The applicant's name and mailing address;

(2) The name and mailing address of the person who will receive the items;

(3) The addresses of both the origin and destination of the items;

(4) The number and types of items intended for interstate movement; and

(5) The reason for the interstate movement.

(b) *Exceptions.* This subpart does not apply to the interstate movement of poultry, vehicles, cages, coops, containers, troughs, or other equipment or material if the interstate movement is made by the United States Department of Agriculture for the purposes of research or diagnosis.

**§ 82.24 Other interstate movements and special permits.**

(a) A special permit is required for the interstate movement of items whose movement interstate is restricted under this subpart in a manner or to a destination other than is specifically prescribed by this subpart. A special permit is required for the disinfection of vehicles, premises, cages, coops, containers, troughs, and other equipment by a method other than is specifically prescribed by this subpart. To apply for a special permit, contact the Administrator, c/o the Veterinarian in charge for the State in which the items are located. The Administrator may, at his or her discretion, issue special permits if he or she determines the activity authorized will not increase the risk of spreading chlamydiosis interstate.

(b) The special permit will list the name and address of the person to whom the special permit is issued, and the special conditions under which the interstate movement, or cleaning and disinfection, may be carried out.

(1) For an interstate movement, the special permit will also include the following:

(i) The name and mailing address of the person who will receive the items;

(ii) The addresses of both the origin and destination of the items;

(iii) The number and type of items to be moved interstate; and

(iv) The reason for the interstate movement.

(2) For cleaning and disinfection, the special permit will also include the following:

(i) The address of the place where the items are located; and

(ii) The number and type of items involved.

(c) For an interstate movement, a copy of the special permit must accompany the items moved, and copies must be submitted so that a copy is received by both the State animal health official and the Veterinarian in charge for the State of destination within 72 hours of the arrival of the items at the destination listed on the special permit.

**§ 82.25 Denial and withdrawal of permits and special permits.**

(a) *Denial.* If the Administrator determines that the applicant for a permit or special permit is not complying with or could not comply

[1] See footnote 3 to § 82.5.

[2] See footnote 4 of § 82.5.

with this subpart or any special conditions needed to prevent the spread of chlamydiosis, or, in the case of a special permit, that the special permit is not required under this subpart, the Administrator may deny the request for a permit or special permit. If the request is denied, the Administrator will send the applicant a written notice explaining why the permit or special permit was denied.

(b) *Withdrawal.* The Administrator may withdraw a permit or special permit, orally or in writing, if he or she determines the person to whom the permit or special permit has been issued is violating either this subpart or some condition specified in the permit or special permit. The Administrator may withdraw the permit or special permit without advance notice if he or she determines that the person to whom the permit or special permit has been issued is violating either this subpart or some condition specified in the permit or special permit in a way that threatens the public health, interest, or safety. The Administrator will send the person to whom the permit or special permit has been issued a written explanation of why the permit or special permit is to be or was withdrawn.

(c) *Appeals.* Denial or withdrawal of a permit or special permit may be appealed to the Administrator within 10 days after receipt of the written notice of denial or withdrawal. The appeal must be in writing[3] and must state all of the facts and reasons upon which the person relies to show that the permit or special permit was wrongfully denied or withdrawn. The Administrator will grant or deny the appeal, in writing, explaining all of the reasons for the decision, as promptly as circumstances allow. In cases where there is a conflict as to any material fact, the person denied a permit or special permit, or from whom a permit or special permit is withdrawn, shall be given an opportunity for a hearing with respect to the merits or validity of the denial or withdrawal in accordance with rules of practice adopted for the proceeding.

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

11. The authority citation for part 92 would continue to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

12. The heading for part 92 would be revised to read as follows:

## PART 92—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS.

### § 92.104 [Amended]

13. Section 92.104 would be amended by removing the word "ornithosis" and adding the word "chlamydiosis" in its place, in the following places:

(a) Paragraph (b)(2);
(b) Paragraph (b)(3);
(c) Paragraph (c)(3);
(d) Paragraph (c)(4);
(e) Paragraph (d)(3); and
(f) Paragraph (d)(4).

### § 92.106 [Amended]

14. In § 92.106, paragraph (c)(7)(iii), Cooperative and Trust Fund Agreement Between _____ (Name of Operator) and the United States Department of Agriculture, Animal and Plant Health Inspection Services, paragraph (A)(17) would be amended by removing the words "velogenic viscerotropic Newcastle disease" and adding in their place the words "exotic Newcastle disease".

### § 92.209 [Amended]

15. In § 92.209, paragraph (a)(2) would be redesignated as paragraph (b) and would be amended by removing the words "viscerotropic velogenic Newcastle disease" and adding in their place the words "exotic Newcastle disease", and paragraph (a)(1) would be redesignated as paragraph (a).

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

16. The authority citation for part 94 would continue to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

17. The heading for part 94 would be revised to read as follows:

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS.

18. In § 94.0, the definition of *Exotic Newcastle disease (VVND)* would be removed and a definition of *Exotic Newcastle disease (END)* would be added, in alphabetical order, to read as follows:

### § 94.0 Definitions.

* * * * *

*Exotic Newcastle disease (END).* Any velogenic Newcastle disease. Exotic Newcastle disease is an acute, rapidly spreading, and usually fatal viral disease of birds and poultry.

* * * * *

### § 94.6 [Amended]

19. Section 94.6 would be amended as follows:

a. The term "VVND" would be removed and the term "END" would be added in its place in the following places:

i. The heading;
ii. Paragraph (a) introductory text;
iii. Paragraph (a)(1);
iv. Paragraph (a)(2);
v. Paragraph (c) introductory text, each time it appears;
vi. Paragraph (d) introductory text, each time it appears;
vii. Paragraph (d)(1)(ix) introductory text;
viii. Paragraph (d)(1)(ix)(A);
ix. Paragraph (d)(1)(ix)(B);
x. Paragraph (d)(1)(ix)(C) introductory text;
xi. Paragraph (d)(1)(ix)(C)(*1*);
xii. Paragraph (d)(1)(ix)(C)(*2*), each time it appears;
xiii. Paragraph (d)(2);
xiv. Paragraph (d)(3), both times it appears; and
xv. Paragraph (d)(4), both times it appears.

b. The term "viscerotropic velogenic Newcastle disease" would be removed and the term "END" would be added in its place in the following places:

i. Paragraph (c)(2); and
ii. Paragraph (c)(5).

## PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

20. The authority citation for part 161 would continue to read as follows:

**Authority:** 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a-1, 115, 116, 120, 121.

[3] See footnote 10 to § 82.13.

125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 161.2 [Amended]**

21. In § 161.2, paragraph (d)(6) would be amended by removing the words "psittacosis or ornithosis, and velogenic viscerotropic Newcastle disease" and adding the words "chlamydiosis and exotic Newcastle disease" in their place.

Done in Washington, DC, this 22nd day of June 1994.

**Alex B. Thiermann,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 94–15635 Filed 6–27–94; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 93–NM–207–AD]**

## Airworthiness Directives; Canadair Model CL–600–1A11, –2A12, and –2B16 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Canadair Model CL–600–1A11, –2A12, and –2B16 series airplanes, that would have required a test of the engine throttle quadrant to determine if the throttle lever bypasses the idle stop into the shut-off position, and modification of the throttle quadrant or replacement of the throttle quadrant with a modified unit. That proposal was prompted by reports of unintentional engine shutdown on certain of these airplanes. This action revises the proposed rule by requiring a different test and eventual replacement of the throttle quadrant. The actions specified by this proposed AD are intended to prevent inadvertent shutdown of an engine while the airplane is taxiing or in flight.

**DATES:** Comments must be received by August 2, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–207–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Raymond J. O'Neill, Aerospace Engineer, Propulsion Branch, ANE–174, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–7421; fax (516) 791–9024.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–207–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Canadair Model CL–600–1A11, –2A12, and –2B16 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on February 9, 1994 (59 FR 5966). That NPRM would have required a test of the engine throttle quadrant to determine if the throttle lever bypasses the idle stop into the shut-off position, and modification of the throttle quadrant or replacement of the throttle quadrant with a modified unit. That NPRM was prompted by reports of unintentional engine shutdown on Model CL–600–2A12 and –2B16 series airplanes. That condition, if not corrected, could result in inadvertent shutdown of an engine while the airplane is taxiing or in flight.

Subsequent to the issuance of that NPRM, Transport Canada Aviation, which is the airworthiness authority for Canada, advised the FAA of an additional unsafe condition that may exist on these, and additional, airplanes. While performing a test of the engine throttle quadrant, one operator discovered that a quick, sharp pull of the throttle lever, combined with contamination of the surfaces of the idle stop plate and pawl, could result in inadvertent run-through of the lever past the idle stop and through the shut-off position. If this were to occur while the airplane was in flight or while taxiing, it could result in the inadvertent shutdown of the engines.

Canadair has issued Challenger Service Bulletins 600–0629 (for Model CL–600–1A11 series airplanes) and 601–0410 (for Model CL–601–2A12 and –2B16 series airplanes), both dated November 1, 1993. These service bulletins contain new procedures for conducting a check of the idle stop function of the throttle quadrant and procedures for cleaning, retesting, and/or replacement of the throttle quadrant, if necessary. These service bulletins also contain instructions for installing a modified throttle quadrant. Operators that have previously accomplished the check and/or modification of the throttle quadrants in accordance with Canadair Challenger Service Bulletin A600–0615, dated June 10, 1992 (for Model CL–600–1A11 series airplanes), and Service Bulletin A601–0374 (for Model CL–600–2A12 and –2B16 series airplanes), Revision 1, dated September 30, 1992, must re-check and replace in accordance with the new service

bulletins. The new service bulletins list part numbers of additional affected throttle quadrants, and serial numbers of additional (Model CL–600–2B16) airplanes that may also be subject to the addressed unsafe condition.

Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian Airworthiness Directive CF–92–23R1, dated March 31, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a check of the idle stop function of the throttle quadrant, and repair or replacement of the throttle quadrant if the check fails. In addition, this proposed AD would require the eventual replacement of the throttle quadrant with a new model. The proposed actions would be required to be accomplished in accordance with the new service bulletins described previously. Additionally, the applicability of the proposed rule would be expanded to include additional airplanes that are subject to the addressed unsafe condition.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 150 airplanes of U.S. registry would be affected by this proposed AD.

The proposed functional check of the throttle quadrant would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed functional check on U.S. operators is estimated to be $8,250, or $55 per airplane.

The proposed installation of a modified throttle quadrant would take approximately 10 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed installation on U.S. operators is estimated to be $82,500, or $550 per airplane.

Based on the figures discussed above, the total cost impact of this proposed AD on U.S. operators is estimated to be $90,750, or $605 per airplane. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**CANADAIR: Docket 93–NM–207–AD.**

*Applicability:* Model CL–600–1A11 series airplanes, serial numbers 1004 through 1085, inclusive, equipped with throttle quadrant part numbers 600–90601–69, –71,, –73, –75, –77, and –79; Model CL–600–2A12 series airplanes, serial numbers 3001 through 3066, inclusive, equipped with throttle quadrant part numbers 600–90601–983, –987, –989, –1013, –1015, –1017, –1019, –1021, –1023, 1025, and –1027; and Model CL–600–2B16 series airplanes, serial numbers 5001 through 5139, inclusive, equipped with throttle quadrant part numbers 600–90601–983, –987, –989, –1013, –1015, –1017, –1019, –1021, –1023, –1025, and –1027; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent inadvertent shutdown of an engine while the airplane is taxiing or in flight, accomplish the following:

(a) Within 150 hours time-in-service after the effective date of this AD, perform a functional test (check) of the idle stop function of the throttle quadrant in accordance with Part A of the Accomplishment Instructions of Canadair Challenger Service Bulletins A600–0629, dated November 1, 1993 (for Model CL–600–1A11 series airplanes), or A601–0410, dated November 1, 1993 (for Model CL–600–2A12 and –2B16 series airplanes), as applicable. If the idle stop functional test fails, prior to further flight, repair or replace the throttle quadrant in accordance with the applicable service bulletin.

(b) Within 1,200 flight hours after the effective date of this AD, replace the throttle quadrant in accordance with Part B of the Accomplishment Instructions of Canadair Challenger Service Bulletins A600–0629, dated November 1, 1993 (for Model CL–600–1A11 series airplanes), or A601–0410, dated November 1, 1993 (for Model CL–600–2A12 and –2B16 series airplanes), as applicable.

(c) Replacement of the throttle quadrant in accordance with Part B of the Accomplishment Instructions of Canadair Challenger Service Bulletins A600–0629, dated November 1, 1993 (for Model CL–600–1A11 series airplanes), or A601–0410, dated November 1, 1993 (for Model CL–600–2A12 and –2B16 series airplanes), as applicable, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 22, 1994. Original signed by:

S.R. Miller,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–15595 Filed 6–27–94; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 71

**[Airspace Docket No. 94–ANE–29]**

## Proposed Amendment of Offshore Airspace Area; East Coast Low

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the East Coast Low Control Area in the vicinity of Nantucket, MA. This action would expand the existing low control area to allow aircraft executing the Back Course Runway 6 instrument approach procedure at Nantucket Memorial Airport, Nantucket, MA (ACK) to remain in controlled airspace at lower altitudes.

**DATES:** Comments must be received on or before July 28, 1994.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Air Traffic Division, New England Region, Docket No. 94–ANE–29, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Karl D. Anderson, Management System Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone, (617) 238–7530; facsimile, (617) 238–7599.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANE–29." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, ANE–7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the East Coast Low Control Area in the vicinity of Nantucket, MA. The intended effect of this action is to allow aircraft executing the Runway 6 Back Course Instrument Approach at the Nantucket Memorial Airport, Nantucket, MA (ACK) to remain in controlled airspace at lower altitudes. This change would allow air traffic control to avoid unnecessary vectoring of aircraft using the Runway 6 Back Course approach to keep those aircraft in controlled airspace. Since approximately 22% of aircraft arriving at ACK use the Runway 6 approach, this change would result in improved air traffic control services to over 6,000 aircraft per year. The coordinates for this airspace docket are based on North American Datum 83. Designations for Low Control Areas are published in Paragraph 6007 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. The Offshore Airspace Area designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) Is not a "Significant Regulatory Action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 6007 Offshore Airspace Areas*

* * * * *

**East Coast Low [Revised]**

That airspace extending upward from 2,000 feet MSL bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 39°25'46" N, long. 74°02'34" W, running to lat. 39°02'05" N, long. 73°39'30" W, then to lat. 40°04'20" N, long. 72°30'00" W, then to lat. 40°37'14" N, long. 72°30'00" W; and that airspace bounded on the north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 40°40'59" N, long. 72°17'22" W, running along the northern boundary of Warning Areas W-106B, W-105C-D, and W-105E to lat. 41°00'00" N, long. 70°51'00" W, then to lat. 41°00'00" N, long. 70°00'00" W, then to lat. 41°02'30" N. long. 70°00'00" W; and that airspace bounded on the south, west and north by a line 12 miles from and parallel to the U.S. shoreline and on the east by a line beginning at lat. 41°16'00" N, long. 69°41'15" W, running to lat. 41°43'00" N, long. 69°39'30" W; and that airspace bounded on the south, west, and northwest by a line 12 miles from and parallel to the U.S. shoreline and on the east and southeast by a line beginning at lat. 42°15'31" N, long. 70°00'00" W, running to lat. 43°17'00" N, long. 70°00'00" W, then to lat. 43°33'56" N, long. 69°29'12" W.

* * * * *

Issued in Burlington, Massachusetts, on June 20, 1994.

**Francis J. Johns,**

*Manager, Air Traffic Division, New England Region.*

[FR Doc. 94-15622 Filed 6-27-94; 8:45 am]

BILLING CODE 4910-13-P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

**[Release No. 34-34245; File No. S7-6-94]**

**RIN 3235-AF84, 3235 AG12**

### Confirmation of Securities Transactions—Extension of Comment Period

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Extension of comment period.

**SUMMARY:** The Securities and Exchange Commission is extending the public comment period from June 15, 1994, to July 15, 1994, for proposed amendments to Rule 10b-10 and a new rule, Rule 15c2-13, which would require brokers, dealers, and municipal securities dealers to make certain disclosures on their customer confirmations.

**DATES:** Comments must be submitted on or before July 15, 1994.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7-6-94. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** C. Dirk Peterson, Senior Counsel, (202) 942-0073, Securities and Exchange Commission, Division of Market Regulation, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** On March 9, 1994, the Commission proposed for public comment amendments to Rule 10b-10 and a new rule, Rule 15c2-13 under the Securities Exchange Act of 1934 (Securities Exchange Act Release No. 33743, 59 FR 12767). Those proposals expanded the information that brokers, dealers, and municipal securities would be required to disclose on a customer confirmation. The proposals are designed to aid investors in monitoring their securities transactions and update the Commission's confirmation requirements to reflect changes in the securities markets.

At the time these proposals were published, the Commission established a 90-day comment period that expired on June 15, 1994. The Commission has received several requests from interested persons to extend the comment period. In light of the complex issues raised by these proposals and the need to solicit the views of as many persons who will be affected by the proposals as possible, the Commission is extending the comment period 30 days. Accordingly, the comment period is extended to July 15, 1994.

Dated: June 22, 1994.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94-15608 Filed 6-27-94; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Chapter I

### American Indian Agricultural Resource Management Act, P.L. 103-177

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of correction.

**SUMMARY:** In the "American Indian Agricultural Resource Management Act, P.L. 103-177," published in 59 FR 23774 on Friday, May 6, 1994, the deadline of June 27, 1994 has been extended to July 27, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mark Bradford, Project Coordinator, Bureau of Indian Affairs, Mail Stop MIB-4559, 1849 C Street, N.W., Washington, D.C. 20240.

Dated: June 21, 1994.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 94-15497 Filed 6-27-94; 8:45 am]

BILLING CODE 4310-02-P

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 938

### Pennsylvania Abandoned Mine Lands Reclamation Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; withdrawal of proposed rule.

**SUMMARY:** OSM is announcing the withdrawal of proposed rule changes to the Pennsylvania Abandoned Mine Land Reclamation Plan (hereinafter referred to as the "Pennsylvania Plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Acting Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101. Telephone: (717) 782-4036.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Pennsylvania Plan**

On July 31, 1982, the Secretary of the Interior approved the Pennsylvania Plan. Background information on the Pennsylvania Plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the July 30, 1982, **Federal Register** (47 FR 33079).

Subsequent actions concerning the conditions of approval and amendments to the Plan can be found at 30 CFR 938.20 and 938.25.

### II. Discussion of the Proposed Amendment

By letter dated December 24, 1992, (Administrative Record No. PA–815.00), Pennsylvania submitted a proposed amendment to its Plan pursuant to SMCRA. The amendment revised the Pennsylvania Plan to assume responsibility for a State-administered emergency reclamation program. The amendment, as submitted, added a new Part F to the current Plan.

On March 23, 1993, OSM published a notice in the **Federal Register** (58 FR 15456) announcing receipt of Pennsylvania's proposed amendment to the Pennsylvania Plan and inviting public comment on its adequacy. On April 26, 1993, OSM published a notice in the **Federal Register** (58 FR 21965) extending the public comment period.

By letter dated June 13, 1994, (Administrative Record No. PA–815.34), Pennsylvania withdrew its December 24, 1992, submission of the proposed Plan amendment.

### List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 20, 1994.

**Robert J. Biggi,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 94–15611 Filed 6–27–94; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 51

[FRL–5001–3]

## Inspection/Maintenance Program Requirements—Provisions for Redesignation

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The proposed revisions include additions and modifications to subpart S, part 51, title 40, Code of Federal Regulations, regarding State Implementation Plan submissions for purposes of redesignation. The proposed revisions specify SIP requirements only for areas that are subject to the basic Inspection/Maintenance program requirement and that otherwise qualify for redesignation from nonattainment to attainment for the carbon monoxide or ozone national ambient air quality standards. This rule proposes to allow such areas to defer adoption and implementation of some of the otherwise applicable requirements established in the original promulgation of the Inspection/Maintenance rule. This proposed rule applies only to areas that by virtue or their air quality classification are required to implement a basic I/M program and that submit, and otherwise qualify for, a redesignation request.

**DATES:** Written comments on this proposal must be received no later than July 28, 1994.

The Agency will hold a public hearing on this proposed amendment if one is requested on or before July 13, 1994.

If a public hearing is held, comments must be received 30 days after the hearing.

**ADDRESSES:** Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–93–21. It is requested that a duplicate copy be submitted to Eugene J. Tierney at the address in the **FOR FURTHER INFORMATION CONTACT** section below. The docket is located at the Air Docket, Room M–1500 (LE–131), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** Eugene J. Tierney, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. (313) 668–4456.

**SUPPLEMENTARY INFORMATION:** Section 107(d)(3)(E) of the Clean Air Act, as amended in 1990 (the Act), states that an area can be redesignated to attainment if the following conditions are met: EPA has determined that the national ambient air quality standards have been attained; EPA has fully approved the applicable implementation plan under section 110(k); EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions due to the implementation plan and other permanent and enforceable reductions; the State has met all applicable requirements of section 110 and part D; and, EPA has fully approved a maintenance plan for the area under section 175A of the Act. Section 175A in turn requires states that submit a redesignation request to submit a plan, and any additional measures if necessary, for maintenance of the air quality standard, for a least a 10 year period following EPA's approval of the redesignation. It also requires the plan to include contingency provisions to ensure prompt correction of any violation of the standard which occurs after redesignation. The contingency measures must include a provision requiring the state to implement measures which were contained in the State Implementation Plan (SIP) prior to redesignation as an attainment area.

The purpose of this document is to propose amendments to the rules in subpart S of part 51 of title 40 of the Code of Federal Regulations (subpart S) to address Inspection/Maintenance (I/M) program requirements for basic areas that qualify for and will ultimately obtain approval by EPA of redesignation requests to attainment. This notice proposes to add a new paragraph to the regulation pertaining to State Implementation Plan (SIP) submissions for areas required to implement a basic I/M program that are submitting and otherwise qualify for approval of a redesignation request.[1] There are basic areas that will be submitting redesignation requests that do not currently have I/M programs, or have either a basic program implemented pursuant to the 1977 amendments to the Act or a basic program upgraded to meet the requirements of EPA's I/M regulations. This rule applies only to areas that by virtue of their air quality classification are required to implement a basic I/M program and that submit, and otherwise qualify for a redesignation request.

In a May 6, 1994 decision, the D.C. Court of Appeals held that EPA did not have authority to construe section 110(k)(4) to authorize conditional approval of an I/M committal SIP that contains no specific enforceable measures, but a promise to adopt specific enforceable measures within a year. Merely, section 110(k)(4) states that: The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

This decision was based on the premise that the statute required all areas required to implement an I/M program to have adopted regulations.

[1] For EPA policy and procedures on being redesignated from nonattainment to attainment for ozone and carbon monoxide see memoranda dated: June 1, 1992; September 4, 1992; October 28, 1992; July 9, 1992; July 22, 1992; and September 17, 1993, which are included in the docket.

The authority for this rulemaking is not based on section 110(k)(4), but on sections 182(a)(2)(B)(i) and 182(b)(4), which applies only to areas required to submit basic I/M programs.

Pursuant to sections 182(a)(2)(B)(i) and 182(b)(4) of the Act, basic I/M areas must submit a SIP revision that includes any "provisions necessary to provide for a vehicle inspection and maintenance program" of no less stringency than either the program that was in the SIP at the time of passage of the Act or the minimum basic program requirements, whichever is more stringent. Basic areas have a nominal requirement only for a schedule for implementation pursuant to section 172(b)(11)(B) of the 1977 Amendments and sections 182(a)(2)(B)(i) and 182(b)(4) of the 1990 Amendments, plus any other requirements established by EPA in guidance. The statutory language of section 182(a)(2)(B)(i) and section 182(b)(4) provides a degree of flexibility compared with the statutory language in section 182(c)(3), which requires enhanced I/M areas to submit a SIP revision "to provide for an enhanced program".

Although for most purposes EPA will continue to interpret "provisions to provide for" a basic I/M program to require full adoption and expeditious implementation of such a program, EPA believes based on this flexible language, that it is appropriate to revise the SIP revisions requirements applicable to basic I/M areas that ultimately will qualify for redesignation. For states which have attained the ambient standard with the benefit of only the current program, or no program at all, EPA does not believe it is necessary to revise or adopt new regulations and undertake other significant planning efforts which are not essential for clean air, and which would not be implemented after redesignation occurred because they are not necessary for maintenance. It would be a wasteful exercise to force the state to go through full adoption of regulations only to have these regulations converted to a contingency measure the moment the redesignation is approved. EPA believes that such states need not submit an actual I/M program as long as there are "provisions necessary to provide" for an I/M program as required by statute. For areas that qualify for redesignation to attainment and ultimately are redesignated, EPA is proposing to amend Subpart S to interpret that statutory phrase to allow such areas to be redesignated if they otherwise qualify for redesignation and submit a SIP that contains the following four elements: (1) Legal authority for a basic I/M program (or an enhanced program if the state chooses to opt up), meeting all of the requirements of Subpart S such that implementing regulations can be adopted without further legislation; (2) a request to place the I/M plan or upgrades (as applicable) in the contingency measures portion of the maintenance plan upon redesignation as described in the fourth element below; (3) a contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt regulations to implement the I/M program in response to a specified triggering event; and (4) a commitment that includes an enforceable schedule for adopting and implementing the I/M program, including appropriate milestones, in the event the contingency measure is triggered (milestones shall be defined by states in terms of months since the triggering event). EPA believes that for areas that otherwise qualify for redesignation a SIP meeting these four requirements would satisfy the obligation to submit "provisions to provide" for a satisfactory I/M program, as required by the statute.

Without these amendments states that are being redesignated to attainment would have to adopt a full I/M program for the purpose of obtaining full approval of their SIPs as meeting all applicable SIP requirements, which is a prerequisite for approval of a redesignation request. Once redesignated these states could discontinue implementation of this program as long as it was converted to a contingency measure.

With these amendments the determination of whether a state fulfills the SIP requirements will depend, for the purposes of redesignation approval only, on whether the state meets the four requirements listed above. EPA believes that this flexibility is built into the basic I/M requirement and should apply only for the limited purpose of considering a redesignation request to attainment.

It should be understood, however, that, pursuant to section 175A(c), while EPA considers the redesignation request, the state continues to be required to meet all the requirements of this subpart. This would include the submission of another SIP revision meeting the existing requirements for fully adopted rules and the specific implementation deadline applicable to the area as required under 40 CFR 51.372 or the I/M rule. If the state does not comply with these requirements it could be subject to sanctions pursuant to section 179. Because the possibility for sanctions exists, states which do not have a solid basis for approval of the redesignation request and maintenance plan should proceed to fully prepare and plan to implement a basic I/M program that meets all the requirements of Subpart S.

The SIP revision must demonstrate that the performance standard in either 40 CFR 53.351 or 51.352 will be met using an evaluation date (rounded to the nearest January for carbon monoxide and July for hydrocarbons) seven years after the trigger date. Emission standards for vehicles subject to an IM240 test may be phased in during the program but full standards must be in effect for at least one complete test cycle before the end of the five year period. All other requirements shall take effect within 24 months of the trigger date. Furthermore, a state may not discontinue implementation of an I/M program until the redesignation request and maintenance plan (that does not rely on reductions from I/M) are finally approved. If the redesignation request is approved, any sanctions already imposed, or any sanctions clock already triggered, would be terminated.

There are four possible scenarios under which an area might present a redesignation request.

1. Areas Without Operating I/M Programs—Section 182(b)(4) of the Act expanded the requirement for submission of a schedule for a basic I/M program to all moderate ozone nonattainment areas. As a result, about 25 new cities were affected by the I/M requirement. Since passage of the Act however, some of these areas have experienced no violation of the standard and are in a position to submit a request to redesignate. Some of these areas may be able to demonstrate maintenance of the standards without implementation of an I/M program.

The proposed changes to Subpart S would allow a state to avoid having to prepare a detailed I/M plan and adopt regulations at this time. EPA would require a detailed implementation plan and regulations would be required by EPA to be submitted and incorporated into the previous SIP within 12 months and implemented within 24 months from the triggering event as specified by the State. Section 175A(d) requires that each maintenance plan revision contain contingency provisions necessary to assure that the State will "promptly correct" any violation of the standard which occurs after the redesignation of an area to attainment. Given the time needed for states to submit and incorporate these measures into the previous SIP and then implement them, EPA believes that these 12 and 24 month time periods are the minimum amount of time in which states can

"promptly correct" the violation which triggered the contingency measure. These time periods are based on EPA's interpretation of a reasonable amount of time to allow the State to submit and implement a new SIP after the triggering event.

2. Basic areas With Operating I/M Programs—Continued Operation Without Upgrades. Section 182(a)(2)(B)(ii) of the Act requires EPA to "review, revise, update, and republish" I/M guidance. EPA did so on November 5, 1992 (as reflected in subpart S) and established new requirements for basic and enhanced I/M programs. These regulations require improved administration of the I/M program in a variety of ways and to meet the performance standard established for basic programs. Some of these areas may be in a position to redesignate to attainment based on a maintenance plan which does not implement these upgrades. EPA believes that its broad authority under section 182(a)(2)(B)(ii) of the Act to revise the guidance for basic I/M areas allows it to structure subpart S such that a redesignation request could be approved for such areas that continue to operate I/M programs provided that the state has the legal authority and regulations necessary to make the upgrade, and submits as a contingency measure a commitment to implement the upgrade in the event of a violation, according to an enforceable schedule, including milestones. The maintenance plan could not, however, claim the full credit provided by the MOBILE model unless the upgrade was implemented. The purpose of the upgrade is to ensure that the emission reduction benefits projected by the MOBILE model are in fact achieved in practice. The MOBILE model is used to determine emission level targets and whether the local I/M program design meets the performance standard as described in 40 CFR 51.351 or 51.352 of subpart S. Areas which continue operation of I/M programs as part of their maintenance plan without an implemented upgrade shall be assumed to be 80% as effective as an implemented upgraded version of the same I/M program design, unless a state can demonstrate using operating information that the I/M program alone is more effective than the implemented upgraded version. The 80% benefit assumption is based on a 20% discount for the lack of administrative requirements, especially quality assurance and quality control, not modeling factors. The model does not include inputs for quality control and quality assurance.

3. Areas With Operating I/M Programs—Continuing Operation With Upgrades. If an area chooses to upgrade the I/M program to meet the requirements of subpart S rather than to take advantage of the amendment proposed today, then a full SIP submission as specified in § 51.372 of subpart S shall be made that addresses those requirements. In this case, a state can claim full MOBILE model credit for the implemented upgrade in the maintenance plan as of its effective date.

4. Areas With Operating I/M Programs—Discontinuing Operation.

Areas which receive approval of the redesignation request may cease operation of the I/M program after this approval if and only if the following requirements are met. First, a modeling demonstration must be included in the maintenance plan which shows the standards can be maintained without the program, and second, the I/M program must be transferred by SIP revision to the contingency measures portion of the maintenance plan and implemented as a contingency measure in the event of a triggering condition. Emission reduction credit cannot be claimed in the maintenance plan if an I/M program is to cease operation.

This proposal does not affect redesignation requests submitted for serious or worse ozone or carbon monoxide areas, moderate CO areas above 12.7 ppm, and for areas claiming full maintenance plan credits for an I/M program without supporting evidence of emission reduction credits. Those areas must meet all the requirements of subpart S. This is because section 182(c)(3) of the Act does not provide the flexibility granted under section 182(b)(4) and explicitly requires areas subject to the enhanced I/M requirement to submit a full I/M program including regulations and implementation requirements.

**Public Participation**

EPA desires full public participation in arriving at final decisions in this rulemaking action. EPA solicits comments on all aspects of today's proposal from all interested parties. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the Air Docket, Docket No. A–93–21.

**Paperwork Reduction Act**

Today's rule places no information collection or recordkeeping burden on respondents. Therefore, an information collection request has not been prepared and submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act* U.S.C. 3501 *et seq.*

**Administrative Designation and Regulatory Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. A small government jurisdiction is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000". This certification is based on the fact that the I/M areas impacted by the rule do not meet the definition of a small government jurisdiction, that is, "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000". It has been determined that this rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review. This rule would only relieve states of some regulatory requirements, not add costs or otherwise adversely affect the economy.

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides, Volatile organic compounds.

Dated: June 10, 1994.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble part 51 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

**Authority:** U.S.C. 7401(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7620.

2. Section 51.372 is proposed to be amended by adding paragraphs (c), (d) and (e) to read as follows:

**§ 51.372 State implementation plan submissions.**

* * * * *

(c) *Redesignation requests.* Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment may receive full approval of a State Implementation Plan (SIP) submittal under sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements:

(1) Legal authority to implement a basic I/M program (or enhanced if the state chooses to opt up) as required by this subpart. The legislative authority for an I/M program shall allow the adoption of implementing regulations without requiring further legislation.

(2) A request to place the I/M plan (if no I/M program is currently in place or if an I/M program has been terminated) or the I/M upgrade (if the existing I/M program is to continue without being upgraded) into the contingency measures portion of the maintenance plan upon redesignation.

(3) A contingency measure consisting of a commitment by the Governor or the governor's designee to adopt regulations to implement the required I/M program in response to a specified triggering event. Such contingency measures must be implemented on the trigger date, which is a date determined by the State to be no later than the date EPA notifies the state that it is in violation of the ozone or carbon monoxide standard.

(4) A commitment that includes an enforceable schedule for adoption and implementation of the I/M program, and appropriate milestones, including the items in paragraphs (a)(1)(ii) through (a)(1)(vii) of this section. In addition, the schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart, excluding schedule requirements. Schedule milestones shall be listed in months from the trigger date, and shall comply with the requirements of paragraph (e) of this section. SIP submission shall occur no more than 12 months after the trigger date as specified by the State.

(d) Basic areas continuing operation of I/M programs as part of their maintenance plan without implemented upgrades shall be assumed to be 80% as effective as an implemented, upgraded version of the same I/M program design, unless a state can demonstrate using operating information that the I/M program is more effective than the 80% level.

(e) *SIP Submittals to Correct Violations.* SIP submissions required pursuant to a violation of the ambient ozone or CO standard (as discussed in paragraph (c) of this section) shall address all of the requirements of this subpart. The SIP shall demonstrate that performance standards in either § 51.351 or § 51.352 shall be met using an evaluation date (rounded to the nearest January for carbon monoxide and July for hydrocarbons) seven years after the trigger date. Emission standards for vehicles subject to an IM240 test may be phased in during the program but full standards must be in effect for at least one complete test cycle before the end of the 5-year period. All other requirements shall take effect within 24 months of the trigger date. The phase-in allowances of § 51.373(c) shall not apply.

[FR Doc. 94–15307 Filed 6–27–94; 8:45 am]

BILLING CODE 6560–50–M

## 40 CFR Part 52

**[OR–38–1–6335b; FRL–4998–9]**

## Approval and Promulgation of State Implementation Plans: Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Oregon for the contingency measure plan for carbon monoxide (CO). The implementation plan was submitted by the state to satisfy certain Federal Clean Air Act requirements for Grants Pass, Medford, Portland, and Klamath Falls, Oregon. In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice.

**DATES:** Comments must be received by July 28, 1994.

**ADDRESSES:** Written comments should be addressed to: Montel Livingston, EPA, 1200 6th Avenue, AT–082, Seattle, WA 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. Copies of the state's request and other information are available for inspection during normal business hours at the following locations: EPA, 1200 6th Avenue, Seattle, WA 98101, and the State of Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, OR 97204–1390.

**FOR FURTHER INFORMATION CONTACT:** Christi Lee, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1814.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the final rules section of this **Federal Register**.

Dated: June 3, 1994.

**Chuck Clarke,**

*Regional Administrator.*

[FR Doc. 94–15675 Filed 6–27–94; 8:45 am]

BILLING CODE 6560–50–M

## 40 CFR Part 180

**[OPP–300351; FRL–4873–7]**

**RIN No. 2070–AC18**

## Poly(Oxyethylene/Oxypropylene) Monoalkyl($C_6$-$C_{10}$)Ether-Sodium Fumarate Adduct; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that an exemption from the requirement of a tolerance be established for residues of poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct (CAS Reg. No. 102900-02-7) when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.1001(c). This proposed regulation was requested by Olin Corp.

**DATES:** Comments, identified by the document control number, [OPP-300351], must be received on or before July 28, 1994.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921

Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for inspection in Rm. 1132, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8393.

**SUPPLEMENTARY INFORMATION:** Olin Corp., 350 Knotter Drive, P.O. Box 586, Cheshire, CT 06410-0586, submitted pesticide petition (PP) 4E4325 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct (CAS Reg. No. 102900-02-7) when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.1001(c).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct will need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers:

1. The minimum number-average molecular weight of poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumerate adduct is 1,900. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct contains as an intergral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether- sodium fumarate adduct does not contain as an intergral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or a modification of a biopolymer that is substantially intact.

7. Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct does not contain a reactive functional group that is intended or reasonably anticipated to undergo further reaction.

9. Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that when used in accordance with good agricultural practice this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains the ingredient listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300351]. All written comments filed in response to this petition will be available in the Public Response and Program Resources

Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 15, 1994.

**Stephen L. Johnson,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended in the table therein by adding and alphabetically inserting the inert ingredients, to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(c) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * | * * * | * * |
| Poly(oxyethylene/oxypropylene) monoalkyl($C_6$-$C_{10}$)ether-sodium fumarate adduct (CAS Reg. No. 102900-02-7), minimum number-average molecular weight 1,900.. | ..... | Surfactant. |
| * * | * * * | * * |

* * * * *

[FR Doc. 94–15677 Filed 6–27–94; 8:45 am]

BILLING CODE 6560–50–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Part 50

### Office of the Secretary

### 45 CFR Part 94

RIN 0905–AE01

### Objectivity in Research

**AGENCY:** Public Health Service and Office of the Secretary, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Public Health Service (PHS) proposes to issue rules requiring Institutions that apply for research funding from the PHS to assume responsibility for ensuring that the financial interests of the employees of the Institution do not compromise the objectivity with which such research is designed, conducted, or reported.

Under the proposed rules, investigators are required to disclose to an official(s) designated by the Institution a listing of Significant Financial Interests. The institutional official(s) will review these disclosures in accordance with an administrative process to be established by each institution. Following this review, the institutional official(s) will determine the acceptability of the reported financial interests and act to protect PHS-funded research from any bias that is reasonably expected to arise from those interests.

**DATES:** To ensure consideration, comments must be received at the address below on or before August 29, 1994.

**ADDRESSES:** Please address comments to: Dr. George J. Galasso, Associate Director for Extramural Affairs, National Institutes of Health, Shannon Building, Room 152, 9000 Rockville Pike, Bethesda, Maryland, 20892. The PHS encourages persons with disabilities to use auxiliary devices and services to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Dr. George J. Galasso, Associate Director for Extramural Affairs, National Institutes of Health at the address above. The telephone number is (301)-496–5356 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Technology Transfer and Conflict of Interest**

Effective interaction between PHS-funded Institutions conducting research and industry is essential to ensure the rapid application of scientific discoveries to the health needs of the Nation and to maintain the international competitiveness of domestic industry. Nonetheless, prudent stewardship of public funds includes protecting Federally funded research from being compromised by the conflicting financial interests of any Investigator responsible for the design, conduct, or reporting of PHS-funded research.

Numerous statutes and programs demonstrate the Federal interest in the promotion of interactions among Government, academia and industry. For example, the Stevenson-Wydler Technology Innovation Act of 1980 (Public Law (P.L.) 96–480) encourages technology transfer, particularly through industrial-academic collaborations. The Patent and Trademark Act Amendments of 1980 (P.L. 96–517) allow universities and other funding recipients to apply for patents developed with Federal funding, and expressly promote collaboration between commercial concerns and nonprofit organizations. The Economic Recovery Tax Act of 1981 (P.L. 97–34) is aimed at fostering research and development by small companies and associated university partners. The Federal Technology Transfer Act of 1986 (P.L. 99–502), which amended P.L. 96–480, and Executive Order 12592 provide similar patent and licensing authority to Federal laboratories, and encourage them to participate in cooperative research and development agreements with the private sector and nonprofit organizations, including universities.

These legal authorities facilitate the movement of intellectual capital

between the Federal Government, academic institutions, and the private sector. This kind of cross-fertilization is critical to the development of the U.S. biotechnology industry. However, these and other inducements for collaboration, as well as the rapid growth of the biotechnology industry, have created a climate in which the stewardship of public funding for biomedical and behavioral research is increasingly complex and challenging.

The value of the results of PHS-funded research to the health and the economy of the Nation must not be compromised by any financial interest that will, or may be reasonably expected to, bias the design, conduct or reporting of the research. The proposed regulations seek to maintain a reasonable balance between these competing interests, give applicants for PHS research funding responsibility and discretion to identify and manage financial interests that may bias the research, and minimize reporting and other burdens on the applicants.

**Background**

The proposed regulations are the result of a lengthy process of consideration. Throughout that process, the PHS has carefully considered and changed its approach in response to public comments.

On June 27 and 28, 1989, the National Institutes of Health (NIH) and the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) sponsored an open meeting to discuss issues related to financial conflict of interest. At that meeting there was general agreement that an Institution that receives research funds from a PHS Awarding Component should develop policies to identify and manage any financial conflict of interest in the funded research.

On September 15, 1989, the NIH and ADAMHA published a Request for Comment on Proposed Guidelines for Policies on Conflict of Interest in the *NIH Guide for Grants and Contracts* (Volume 18, Number 32). Seven hundred fifty-one responses were received from individuals associated with medical schools, other academic and research institutions, biotechnology companies, local governments, and non-profit organizations; venture capitalists; attorneys; biomedical journal editors; Federal employees and contractors at Government facilities; and others. In general, those submitting comments were concerned that the proposed guidelines imposed undue burdens on funded institutions and would impede mutually beneficial research collaboration between universities and industry. In response to these comments, the Secretary determined that regulations should be developed that would address those concerns.

A public meeting was held at NIH on November 30, 1990, to discuss further the regulation of financial conflict of interest by the PHS. The 18 written comments received at that time reflected views similar to those received earlier.

Many respondents to earlier proposals stated that the primary responsibility for setting guidelines and maintaining compliance should rest with each awardee Institution. The present proposed rule, like PHS policy in other areas involving protection of the public interest (such as the protection of human subjects in research and the investigation of alleged scientific misconduct), sets standards for performance and assigns the primary responsibility for procedural development and compliance to the Institution.

Many of those commenting on prior proposals agreed with the importance of disclosure, but thought that the requirement to disclose all financial interests, as set forth in the previously proposed guidelines, should be reduced in scope to prevent needless invasion of privacy and creation of paperwork burdens. The proposed regulations achieve this end by limiting the disclosures that must be made to "Significant Financial Interests," any interest of monetary value exceeding a defined threshold of value ($5,000) or percentage of ownership (five percent or more) that would reasonably appear to be directly and significantly affected by the research funded by PHS or proposed for funding. PHS specifically requests public comment on whether the minimum threshold for disclosure is appropriate to ensure that PHS-funded research projects are not biased by conflicting financial interests of those responsible for the design, conduct, or reporting of the research.

There was a wide range of opinion among those commenting on previous proposals regarding which types of financial interest should be permissible. In these proposed rules a Significant Financial Interest (defined in § 50.603) of the type specified in § 50.605(a) must be managed as provided in § 50.605(b) and the existence and management, reduction, or elimination of that financial interest must be certified in the application. The PHS may at any time request submission of, or review on site, all records pertinent to the certification. This procedure gives Institutions broad discretion in determining how to manage Significant Financial Interests that reasonably appear to directly and significantly affect the design, conduct, or reporting of the research while providing for appropriate PHS oversight. PHS may undertake periodic reviews of the records in order to assess the reliability of institutional and investigator certifications, and to determine whether institutional safeguards do, in fact, protect the integrity of PHS-funded research. In undertaking any such review HHS will coordinate, to the extent feasible, with the National Science Foundation (NSF) to ensure that institutions are not unnecessarily subjected to multi-agency reviews.

Managing potential conflicts carefully; avoiding unnecessary burden and useless paperwork; and preserving appropriate incentives for productive research represent challenges individually and collectively. Even after we issue a final rule some unforeseen problems will certainly emerge. Therefore, approximately one year after the final rule is issued we plan to initiate an evaluation, to include a conference and other mechanisms to consult with investigators and institutions. Based on that evaluation, we would revise these rules if and as appropriate.

*Basis and Purpose.* A more detailed discussion of the proposed regulations and their basis and purpose follows.

**I. Applicability**

*a. Types of Research*

The proposed regulations implement section 493A of the PHS Act, added by Public Law 103–43, which mandates the issuance of regulations defining, and setting standards for, the management of financial interests that will, or may be reasonably expected to, bias a clinical research project whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment. In addition, the proposed regulations implement section 924 of the PHS Act, as amended by Public Law 102–410, which requires the Administrator of the Agency for Health Care Policy and Research (AHCPR) to issue regulations defining the financial interests that will, or may be reasonably expected to, create a bias in the health care services research projects funded by the AHCPR. The proposed regulations are not limited to the implementation of these statutory authorities, however. Pursuant to the Secretary's authority to issue regulations governing those who seek or receive PHS funding, they apply broadly to all research funded by the PHS, whether under the authority of the PHS Act or other statutes, except Phase I projects under the Small Business

Innovation Research (SBIR) Program. Very limited amounts of funding are provided under Phase I of the SIBR Program to plan and determine the feasibility of the research project for further funding under Phase II. Because potentially biasing financial interests will be assessed at the time of the Phase II application, it would be burdensome and unproductive to require such a review for Phase I applications. With this exception, it is believed that financial interests can create a bias in all types of research, although the likelihood of such a bias may diminish if the outcome of the research would have little effect on the commercial potential of any product, device, or other property in which the Investigator may have a financial interest. However, this distinction can not be so clearly drawn that the need to protect the integrity of all PHS-funded research uniformly is alleviated.

*b. Individual vs. Institutional Financial Interests*

The proposed regulations provide for the disclosure and consideration of the financial interests of individuals involved in the design, conduct, and reporting of the research. Section 493A of the PHS Act, added by Public Law 103–43, refers to financial interests of entities (e.g., institutions), as well as individuals, in clinical research projects. We are considering the following alternatives with respect to the coverage of institutions that apply for clinical research funding under the PHS Act:

(1) Exempting Institutional Financial Interests That Would Not Bias the Project

Under the statute, adoption of this alternative would be based on a determination that the exempted institutional financial interests would not be reasonably expected to bias the design, conduct, or reporting of PHS-funded research. This conclusion might be based on a finding that the limited size of the interest would preclude any biasing effect, or a finding that the institutional financial interest would have only an indirect and unpredictable effect on the project, in the absence of a personal financial interest on the part of those responsible for the design, conduct or reporting of the research. There would, of course, have to be a reasonable factual basis for such findings.

(2) Requiring Institutional Applicants To Certify Whether They Have Significant Financial Interests

Adoption of this alternative would involve establishing a procedure for institutions similar to the procedure in the proposed regulation for individuals. This option would be based on the same rationale as the preceding option, i.e. that there is no need to regulate institutional financial interests that aren't reasonably expected to bias the conduct of the research. Significant Financial Interest might be defined for institutions as limited only to direct financial interests (such as a patent application on, or a financial arrangement with a company regarding, the product of the research).

(3) Requiring Full Disclosure to the PHS of the Financial Interests of Institutions

This alternative would impose a reporting burden upon the institutions, but would ensure a complete PHS review of any potential conflict of interest prior to a funding decision.

(4) Other Alternatives

We will also consider combinations of these three alternatives and other alternatives that may be suggested in the public comments. We will choose an alternative based on the requirements of the statute, and, to the extent consistent with the statute, based upon our weighing of the burdens on the institutions, the potential that institutional financial interests will bias PHS-funded research, and the potential adverse effect of the alternative upon technology transfer.

*c. Types of Interests*

The proposed regulations require disclosure of "significant financial interests" of the Investigator that would reasonably appear to be directly and significantly affected by the research funded by PHS or proposed for funding or of the investigator in an entity whose financial interest would reasonably appear to be directly and significantly affected by the PHS research. The following are examples of the types of significant financial interests that would fall within the categories in § 50.605: ownership of stock, stock options, or any equity, debt, security, capital holding, salary or other remuneration, or financial consideration, or thing of value for services as an employee, consultant, officer, or board member in (1) any business enterprise, including the applicant for PHS funds (except SBIR applicants are not included), that owns or has applied for the patent, manufacturing or marketing rights to a drug, vaccine, device, procedure or any other product involved in or that will predictably result from the research described in the application or (2) a business enterprise that is known by the investigator to own or have applied for such rights in any product that can reasonably be expected to compete with the product or procedure that will predictably result from the research described in the application. We request comments on a range of disclosures that would on the one hand, include interests that may threaten objectivity; and, on the other exclude those interests that cannot reasonably be regulated or that are so obvious as not to warrant regulations. We also request comments on whether specific examples of biasing significant financial interests, such as those set forth above, should be included in the regulations.

In particular, we request comments on whether interests in a business enterprise that is known by the investigator to have an interest in a product that competes with the product involved in the application should fall within the categories of significant financial interests described in § 50.605. There may not be any reasonable way for an investigator either to identify all competing products or to determine what companies own them. For example, for most medical devices there may be dozens of competing products, many made by subsidiaries of "Fortune 500" conglomerates. How would an investigator determine just what products were "competing"? Should we be concerned if an investigator owns $5,000 of stock in a company in which only a small fraction of revenues and profits derive from the competing product? We request comments on whether, and how best, to cover interests in competing products.

We also request comments on whether an employee's stock or other non-salary financial interests in the applicant institution should be covered. This is of particular relevance when the grant or contract is with a for-profit enterprise. Specifically, should we be concerned, and how could we expect the company to "manage" against conflict, when the company's employees obviously stand to benefit if the product is a commercial success? The proposed rule includes an exemption for an ownership interest in the institution if it is a Small Business Innovation Research (SBIR) applicant. Can we justify exempting SBIR awards and not all other awards to both large and small profit-making enterprises? Should we exempt from disclosure any equity or ownership interest in the applicant institution? Should we exempt disclosure of interests other

than bonuses or other compensation tied to the outcome of the research?

**II. Burdens Upon Applicants**

The proposed regulation is intended to minimize reporting and other burdens upon applicants to the maximum extent feasible. Certain types or amounts of financial interests that cannot be reasonably expected to bias the research are excluded from the requirements for disclosure by investigators. Such interests are also excluded from the certification of whether these are Significant Financial Interests that must accompany each application. Even when there is a Significant Financial Interest of the type specified in the proposed rule, the institutions are given broad discretion in managing the conflict; details of the interest need not be reported to the PHS awarding component. It is the responsibility of that component to determine whether to review the institutional records relating to the disclosure and management of that interest.

The Department will also seek to reduce burdens upon applicants by being available to provide advice and assistance as applicants establish the policies and procedures required by this subpart. The PHS Awarding Components will be available to respond to general inquiries regarding compliance with this subpart.

Another way of reducing burdens upon applicants is to exempt certain types of applicants from the requirements or to impose different, less burdensome requirements on them. The proposed § 50.602 provides that the regulations do not apply to SBIR Phase I applications and that where the applicant for a research grant is an individual, determinations of the procedures to be followed to ensure the objectivity of the research will be made on a case-by-case basis. The National Science Foundation (NSF) exempts from its Investigator Financial Disclosure Policy that is being published in this issue of the **Federal Register** grantees employing fifty persons or less. Comment on whether HHS should adopt a similar exclusion is requested. Our experiences with conflict of interest situations indicate that investigators working for small entities may be just as subject to conflicts of interest as investigators working at large institutions. The interests of appropriate coverage and of reducing burdens might both be served by determining the procedures to be followed by small entities on a case-by-case basis as is proposed for individuals.

**III. Uniform Federal Policy**

We have been working closely with the National Science Foundation (NSF) to ensure that this Notice of Proposed Rulemaking and the policy published by NSF in this issue of the **Federal Register** will be consistent, and will impose the same obligations on funding recipients. In addition, HHS has been working with the Office of Science and Technology Policy, the Office Management and Budget, NSF, and other interested agencies to develop and propose a common Federal policy on investigator conflicts of interest. It is expected that this policy, when completed, will ensure consistent treatment of investigator conflicts issues by all Federal funding agencies.

However, the statutes described above have necessitated some inconsistencies between these proposed regulations and the policy being published by the NSF. Unlike the NSF policy, there is no provision permitting institutions to waive the management, reduction, or elimination of an actual or potential conflicting interest when such action would be either ineffective or inequitable, and the potential negative impacts that might arise from the conflicting interest are outweighed by interests of scientific progress, technology transfer, or the public health and welfare. Because section 493A of the Public Health Service Act requires institutions conducting PHS-funded clinical research projects to manage or eliminate financial interests that would potentially bias the project, we do not believe HHS has the discretion to permit institutions to waive this requirement. Similarly, section 493A necessitates the requirements for institutional notification of the PHS Awarding Component in § 50.604(a)(7)(ii) and (8). In addition, the statute specifically requires the announcement, with each public presentation of the research, of a conflicting financial interest that was not managed, reduced, or eliminated, as set forth in § 50.606(d). This requirement is limited to PHS-funded clinical research projects, but the requirements of institutional notification to the PHS have not been so limited, because we believe that such notification serves a useful purpose for all PHS-funded research, and that disparate reporting requirements for different types of research would cause confusion and create burdens for the institutions.

The Department notes that "management of a financial interest that could potentially bias a project" may include recognition by the institution that a potential conflict exists, and monitoring progress of the research to insure that the financial interest does not bias the project. The Department specifically requests comment on whether this interpretation maximizes consistency between this NPRM and the NSF's final policy, in the light of the statutory distinctions discussed above. The Department seeks comment on whether this expansion of the statutory requirement is appropriate in the context of PHS-funded research and the need to minimize burden on institutions.

**IV. Relationship to Other Laws**

Many Institutions funded by the PHS Awarding Components are State Institutions whose employees are subject to State laws designed to prevent financial conflict of interest. The proposed rules would not supplant these requirements and are intended to be applied in addition to other applicable Federal and State restrictions related to potential financial conflicts of interest, including Federal statutes and regulations that prohibit trading in securities with knowledge of privileged or non-public information.

**V. Enforcement**

The proposed regulations provide for enforcement remedies both against researchers that fail to comply with institutional policies issued under the regulation and Institutions that fail to comply with the regulation. The proposed rules specifically state that the requirements constitute a condition of award and as such could be enforced through the suspension or termination of a grant or cooperative agreement. A Termination for Convenience or a Stop Work Order could be issued in accordance with the FAR if a contractor fails to enforce the Special Standards. Each contractor would be required to meet the specified responsibility requirements prior to award of a contract. PHS awarding components will work diligently with applicants to resolve compliance problems informally, to avoid the need for formal enforcement action.

**E.O. 12866/Regulatory Flexibility Act Analysis**

Executive Order 12866 requires us to prepare an analysis for any rule that meets one of the E.O. 12866 criteria for a significant regulatory action, that is, that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local, or tribal governments, and communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, we prepare a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act, if the rule is expected to have a significant impact on a substantial number of small entities.

For reasons outlined below, we do not believe this rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. In addition, this rule is not inconsistent with the actions of any other agency. However, we recognize that there are potential inconsistencies depending on what other agencies may later propose. Several agencies are now considering issuing policies on what circumstances are likely to lead to bias in research that is funded or relied upon by the Federal Government.

Any rule in this area has the potential to inhibit socially beneficial research, and to hamper the technological progress so essential to the American economy and to the advance of science. We are further mindful of the importance of the requirements in Executive Order 12866 that any new regulatory system be based on a showing that there is a significant problem requiring regulation, that regulatory priorities be based on the degree and nature of risks, and that regulations be designed to be cost-effective. Moreover, the Regulatory Flexibility Act requires us to minimize adverse effects not only on small businesses and individual entrepreneurs, but also on almost all non-profit entities including universities.

In the hearings that preceded enactment of the requirement in the NIH Revitalization Act, known cases were described in which scientists have stood to make large sums of money contingent on the positive outcome of research on a particular product, where this fact was not known to those reviewing the research, and where bias did occur.

We have drafted this rule to address these instances of abuse, while minimizing unnecessary burden to researchers. We did not consider any option that would routinely require all researchers to list all of their significant assets (unrelated to the research project), that would encourage searches for hypothetical or speculative conflicts, that would require divestiture of ownership of a product undergoing research, or that would discourage in any way funding grants or contracts to scientists to develop products with significant profit potential. We have not inhibited research in any way, other than requiring that it be managed to assure that potential bias is minimized. Such management methods are common in the sciences and impose no undue burden.

We request comment on whether there are any provisions of the proposed rule that might inadvertently hamper socially desirable research. For example, we have proposed allowing institutions to require that researcher employees divest themselves of stock in companies owning products undergoing research. Conversely, if there are other types of situations in which a financial conflict of interest has a substantial risk of biasing research results, we will consider expanding the scope of the rule. We ask that commenters provide evidence as to magnitude and frequency of any claimed adverse effects or loopholes.

We do not believe that the annual costs of implementing this rule will reach as much as $1,000 an institution in staff time, or as much as $1 million a year across all institutions. Most of the cost will arise from the several seconds or minutes spent certifying the absence of significant financial interests for individual awards. Spread across thousands of grantee and contractor institutions, these costs are infinitesimal. Therefore, we have determined that this rule would not create an "unfunded mandate" imposed on state-owned institutions and would not trigger the requirements of Executive Order 12875, on "Enhancing the Intergovernmental Partnership."

For these same reasons, we certify that this rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is not required.

**2. Paperwork Reduction Act**

The proposed rules contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Appropriate instructions for making certifications to the PHS Awarding Components will be issued as an addendum to the instructions for applications for PHS research funding. It is contemplated that the certification will be provided by checking a box on the application. The title, description, and respondent description applicable to the information collection are shown below with an estimate of the annual reporting and record-keeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service (PHS) Funding is Sought.

Description: The regulations would require each applicant/offeror Institution to establish procedures to avoid the inappropriate financial interest of an Investigator involved in the design, conduct or reporting of the research for which PHS funding is sought.

Description of Respondents: Public and private non-profit institutions, small businesses, and other for-profit organizations.

ESTIMATED ANNUAL REPORT AND RECORD KEEPING BURDEN

| Applicable section of regulation 42 CFR | Applicable section of regulation 45 CFR 94 | Total No. of respondents | Hours per response | Total hours 42 CFR | Total hours 45 CFR | Total hours |
|---|---|---|---|---|---|---|
| Reporting: | | | | | | |
| 50.604(a)(8) | (d)(1)(viii) | 20 | 10.0 | 160 | 40 | 200 |
| 50.604(b) | (d)(2) | 100 | 10.0 | 850 | 150 | 1,000 |
| 50.606(a) | (f)(1) | 20 | 10.0 | 160 | 40 | 200 |
| Sub-Total | | | | | | 1,400 |
| Record keeping: | | | | | | |

ESTIMATED ANNUAL REPORT AND RECORD KEEPING BURDEN—Continued

| Applicable section of regulation 42 CFR | Applicable section of regulation 45 CFR 94 | Total No. of respondents | Hours per response | Total hours 42 CFR | Total hours 45 CFR | Total hours |
|---|---|---|---|---|---|---|
| 50.604(a)(5) | (d)(1)(v) | 2,000 | 100.0 | 180,000 | 20,000 | 200,000 |
| Sub-Total | | | | | | 200,000 |
| Disclosure: | | | | | | |
| 50.604(a)(1) | (d)(1)(i) | 2,000 | 10.0 | 18,000 | 2,000 | 20,000 |
| 50.604(a)(3) | (d)(1)(iii) | 50,000 | 1.0 | 45,000 | 5,000 | 50,000 |
| Sub-Total | | | | | | 70,000 |
| Total Burden | | | | | | 271,400 |

In accordance with the requirements of the Paperwork Reduction Act of 1980, the Department of Health and Human Services will submit the information collection requirements cited above to OMB for review and approval. Organizations and individuals desiring to submit comments on the information collection requirements and the estimated burden should direct such comments to the information address cited above and to: NIH/PHS Desk Officer, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, 725 17th St., NW., Washington, DC 20503.

**Catalogue of Federal Domestic Assistance**

The proposed rules affect all research, research and development, and research and development support funded by the Public Health Service. Questions about the proposed rules should be directed to the Information Contact provided above.

**List of Subjects**

*42 CFR Part 50*

Grant programs—health; Conflict of interest; Medical research; Behavioral, biological, biochemical, psychological and psychiatric research.

*45 CFR Part 94*

Government procurement.

Dated: June 16, 1994.

**Philip R. Lee,**

*Assistant Secretary for Health.*

Dated: June 17, 1994.

**Donna E. Shalala,**

*Secretary.*

Accordingly, it is proposed to amend 42 CFR part 50 and 45 CFR subtitle A as set forth below:

**42 CFR Chapter I**

**PART 50—[AMENDED]**

1. Subpart F is added to 42 CFR Part 50 to read as follows:

**Subpart F—Responsibility of Applicants for Promoting Objectivity in Research for Which PHS Funding Is Sought**



## Subpart F—Responsibility of Applicants for Promoting Objectivity in Research for Which PHS Funding Is Sought

**Authority:** 42 U.S.C. 216, 289b–1, 299c–3.

### § 50.601 Purpose.

This subpart promotes objectivity in research by requiring that each Institution that applies for PHS grants or cooperative agreements for research ensure there is no reasonable expectation that the design, conduct, and reporting of the research to be funded pursuant to the application will be biased by any Significant Financial Interest of an Investigator responsible for the design, conduct, or reporting of the research.

### § 50.602 Applicability.

This subpart is applicable to each Institution that applies for PHS grants or cooperative agreements for research and, through the implementation of this subpart by each Institution, to each Investigator participating in research covered by this subpart; provided, that this subpart does not apply to SBIR Program Phase I applications. In those few cases where an individual, rather than an institution, is an applicant for PHS grants or cooperative agreements for research, PHS Awarding Components will make case-by-case determinations on the steps to be taken to ensure that the design, conduct, and reporting of the research will not be biased by any Significant Financial Interest of the individual.

### § 50.603 Definitions.

As used in this subpart:

*HHS* means the United States Department of Health and Human Services, and any components of the Department to which the authority involved may be delegated.

*Institution* means any domestic or foreign, public or private, entity or organization (excluding a Federal agency).

*Investigator* means the principal investigator and any other person at the Institution who is responsible for the design, conduct, or reporting of research funded by PHS, or proposed for such funding. For the purposes of the requirements of this subpart relating to financial interests, "Investigator" includes the Investigator's spouse and dependent children.

*PHS* means the Public Health Service, an operating division of the U.S. Department of Health and Human Services, and any components of the PHS to which the authority involved may be delegated.

*PHS Awarding Component* means the organizational unit of the PHS that funds the research that is subject to this subpart.

*Public Health Service Act* or *PHS Act* means the statute codified at 42 U.S.C. 201 *et seq.*

*Research* means a systematic investigation designed to develop or contribute to generalizable knowledge relating broadly to public health, including behavioral and social-sciences research. The term encompasses basic and applied research and product development. As used in this subpart, the term includes any such activity for which research funding is available from a PHS Awarding Component through a grant or cooperative agreement whether authorized under the PHS Act or other statutory authority.

*Significant Financial Interest* means anything of monetary value, including

but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights and royalties from such rights). The term does not include:

(1) Salary, royalties, or other remuneration from the institution; or any ownership interests in the institution, if the institution is an applicant under the SBIR Program;

(2) Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities;

(3) Income from service on advisory committees or review panels for public or nonprofit entities; or

(4) Financial interests in business enterprises or entities if the value of such interests do not exceed $5,000 per annum if salary, fees or other continuing payments or represent more than a 5% ownership interest for any one enterprise or entity when aggregated for the investigator and the investigator's spouse and dependent children.

*Small Business Innovation Research (SBIR) Program* means the extramural research program for small business that is established by the Awarding Components of the Public Health Service and certain other Federal agencies under Public Law 97–219, the Small Business Innovation Development Act, as amended. For purposes of this subpart, the term SBIR Program includes the Small Business Technology Transfer (SBTT) Program, which was established by Public Law 102–564.

**§ 50.604 Institutional responsibility regarding Significant Financial Interests of Investigators.**

(a) Each Institution must:

(1) Inform each Investigator of the Institution's policy for identifying and managing Significant Financial Interests, the Investigator's reporting responsibilities, and of this subpart.

(2) Designate an institutional official(s) to solicit and review financial disclosure statements from each Investigator who is planning to participate in PHS-funded research.

(3) Ensure that Investigators have provided to the designated official(s) a listing of Significant Financial Interests that ensures disclosure of all Significant Financial Interests of the type described in § 50.605(a) prior to the time an application is submitted to PHS. All financial disclosures must be updated during the pendency of the award, either on an annual basis, or as new reportable Significant Financial Interests are obtained.

(4) Provide guidelines consistent with this subpart for the designated official(s) to identify Significant Financial Interests of the type described in § 50.605(a) and take such actions as necessary to ensure that any such financial interest will be managed, reduced, or eliminated.

(5) Maintain records, identifiable to each award, of all financial disclosures and all actions taken by the Institution with respect to each Significant Financial Interest of the type described in § 50.605 for at least three years beyond the termination or completion of the award, or until resolution of any action by the HHS involving the records, whichever is longer.

(6) Establish procedures for resolving any alleged violation of the financial conflict of interest policy of the Institution and establish appropriate enforcement action for failure to comply.

(7) Certify, in each application for the funding to which this subpart applies, that:

(i) There is in effect at that Institution a written and enforced administrative process to identify and manage, reduce or eliminate Significant Financial Interests of the type described in § 50.605(a) with respect to all research projects for which funding is sought from the PHS,

(ii) The Institution either has, or has not found a Significant Financial Interest of the type described in § 50.606 and, where such interest is found, certify that actions will be taken prior to the award of funding to manage, reduce or eliminate that interest in accordance with this subpart; and that the Institution will notify the PHS Awarding Component of such action prior to issuance of the Notice of Grant Award.

(iii) The Institution agrees to make information available, upon request, to the HHS regarding all Significant Financial Interests identified by the Institution of the type described in § 50.605 and how those interests have been managed, reduced, or eliminated to protect the research from bias;

(iv) The Institution will otherwise comply with this subpart.

(8) (i) Notify the PHS Awarding Component of the identification and management, reduction or elimination of any Significant Financial Interest of the type described in § 50.605 that originates or becomes known to the institution after the grant or cooperative agreement has been awarded, within sixty days of its becoming aware of that interest.

(ii) The HHS may at any time request submission of, or review on site, all records pertinent to these certifications. To the extent permitted by law, all records of financial interests will be maintained confidentially.

(iii) An investigator may participate in a PHS-funded research project that is being simultaneously supported by an organization that has a commercial interest in the finding of the research project. However, the research support must be provided through the PHS awardee Institution. Any direct compensation or payment to the Investigator under that support is considered a financial interest under this subpart.

**§ 50.605 Management of Significant Financial Interests.**

(a)(1) Institutions applying for PHS funding for research shall ensure that the following types of Significant Financial Interests attributable to an Investigator are managed, reduced, or eliminated, in accordance with paragraph (b) of this section, prior to award of the grant:

(i) Any Significant Financial Interest of the Investigator that would reasonably appear to be directly and significantly affected by the research funded by PHS, or proposed for funding; and

(ii) Any Significant Financial Interest of the Investigator in an entity whose financial Interest would reasonably appear to be directly and significantly affected by the research funded by PHS, or proposed for funding.

(2) In addition to the types of Significant Financial Interests described in this paragraph that must be managed, an Institution may require the management of other financial interests as the Institution deems appropriate.

(b) The designated official(s) must review all financial disclosures, determine whether Significant Financial Interests could affect the design, conduct, or reporting of the research activities funded by PHS, or proposed for such funding, and determine what conditions or restrictions, if any, should be imposed by the institution to manage such interests. Examples of conditions or restrictions that might be imposed to manage actual or potential conflicts of interest include:

(1) Public disclosure of significant financial interests;

(2) Monitoring of research by independent reviewers;

(3) Modification of the research plan;

(4) Disqualification from participation in all or a portion of the research funded by the PHS;

(5) Divestiture of significant financial interests; or

(6) Severance of relationships that create actual or potential conflicts.

**§ 50.606 Remedies.**

(a) Each Institution that applies for research funding from the PHS must include in its policy for the identification and management of Significant Financial Interest procedures for enforcement action against employees who do not comply with the Institution's policy. If the failure of an employee to comply with the policy of the Institution has biased the design, conduct, or reporting of the PHS-funded research, the Institution must promptly notify the PHS Awarding Component of the corrective action taken. The PHS Awarding Component will consider the situation and, as necessary, take appropriate action, or refer the matter to the Institution for further action, which may include directions to the Institution on how to maintain appropriate objectivity in the funded project.

(b) The HHS may inquire into the Institutional procedures and actions regarding financial interests in PHS-funded research, including the disposition of a particular financial interest. Such inquiry may be initiated based on information obtained by the HHS under this subpart, from an award-related document (application, progress report, publication of results), or any other source. Based on a specific inquiry, the HHS may decide that a particular Significant Financial Interest of the type described in § 50.606 will bias the objectivity of the PHS-funded research to such an extent that further corrective action is needed or that the Institution has not managed a Significant Financial Interest described in § 50.606 in accordance with this subpart. The PHS may determine that suspension of funding is necessary until the matter is resolved.

(c) In any case in which the Department determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a Significant Financial Interest that was not disclosed or managed as required by this subpart, the Institution must require disclosure of the financial interest in each public presentation of the results of the research.

**§ 50.607 Other HHS regulations that apply.**

Several other regulations and policies apply to this subpart. They include, but are not necessarily limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Administration of grants

45 CFR Part 76—Government-wide debarment and suspension (non-procurement)

45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

**45 CFR SUBTITLE A**

2. A new Part 94 is added to 45 CFR subtitle A to read as follows:

**45 CFR Part 94—Responsible Prospective Contractors**



**Authority:** 42 U.S.C. 216, 289b–1, 299c–3.

**§ 94.1 Purpose.**

This part promotes objectivity in research by establishing special standards for each Institution to ensure that the design, conduct, and reporting of research to be performed are not compromised by any Significant Financial Interest of an Investigator responsible for the design, conduct, or reporting of the research.

**§ 94.2 Applicability.**

This section is applicable to each Institution that seeks PHS funding for research and, through the implementation of this section, to each Investigator who participates in such research; provided that this section does not apply to SBIR Program Phase I applications.

**§ 94.3 Definitions.**

As used in this part:

*Contractor* means an entity that provides property or services for the direct benefit or use of the Federal Government.

*HHS* means the United States Department of Health and Human Services, and any components of the Department to which the authority involved may be delegated.

*Institution* means any public or private entity or organization (excluding a Federal agency) that:

(1) Submits a proposal for a research contract whether in response to a solicitation from the PHS or otherwise, or

(2) Assumes the legal obligation to carry out the research required under the contract.

*Investigator* means the principal investigator and any other person at the Institution who is responsible for the design, conduct, or reporting of a research project funded by PHS, or proposed for such funding. For the purposes of the requirements of this section relating to financial interests, "Investigator" includes the Investigator's spouse and dependent children.

*PHS* means the Public Health Service, an operating division of the U.S. Department of Health and Human Services, and any components of the PHS to which the authority involved may be delegated.

*PHS Awarding Component* means an organizational unit of the PHS that funds research that is subject to this part.

*Public Health Service Act* or PHS Act mean the statute codified at 42 U.S.C. § 201 *et seq.*

*Research* means a systematic investigation designed to develop or contribute to generalizable knowledge relating broadly to public health, including behavioral and social-sciences research. The term encompasses basic and applied research and product development. As used in this part, the term includes any such activity for which funding is available from a PHS Awarding Component, whether authorized under the PHS Act or other statutory authority.

*Significant Financial Interest* means anything of monetary value, including but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights and royalties from such rights). The term does not include:

(1) Salary, royalties, or other remuneration from the institution; or any ownership interests in the institution, if the institution is an applicant under the SBIR program;

(2) Income from seminars, lectures, or teaching engagements sponsored by pubic or nonprofit entities;

(3) Income from service on advisory committees or review panels for public or nonprofit entities; or

(4) Financial interests in business enterprises or entities if the value of such interests do not exceed $5,000 or represent more than a 5% ownership interest for any one enterprise or entity when aggregated for the investigator and the investigator's spouse and dependent children.

*Small Business Innovation Research (SBIR) Program* means the extramural research program for small business that

is established by the awarding components of the Public Health Service and certain other Federal agencies under Public Law 97–219, the Small Business Innovation Development Act, as amended. For purposes of this part, the term SBIR Program includes the Small Business Technology Transfer (SBTT) Program, which was established by Public Law 102–564.

**§ 94.4 Institutional Assurance and Responsibility Regarding Significant Financial Interests of Investigators.**

(a) Each Institution must:

(1) Inform each Investigator of the Institution's policy for identifying and managing Significant Financial Interests, the Investigator's reporting responsibilities, and of this part.

(2) Designate an institutional official(s) to solicit and review financial disclosure statements from each Investigator who is planning to participate in PHS-funded research.

(3) Ensure that Investigators have provided to the designated official(s) a listing of Significant Financial Interests that ensures disclosure of all Significant Financial Interests of the type described in paragraph (e)(1) of this part, prior to the time an application is submitted to PHS. All financial disclosures must be updated during the pendency of the award, either on an annual basis, or as new reportable Significant Financial Interests are obtained.

(4) Provide guidelines consistent with this subpart for the designated official(s) to identify Significant Financial Interests of the type described in paragraph (e)(1) of this part and take such actions as necessary to ensure that any such financial interest will be managed, reduced, or eliminated.

(5) Maintain records identifiable to each award of all financial disclosures and all actions taken by the Institution with respect to each Significant Financial Interest of the type described in § 94.5 for at least three years beyond the termination or completion of the contract, or until resolution of any action by the HHS involving the records, whichever is longer.

(6) Establish procedures for resolving any alleged violation of the financial conflict of interest policy of the Institution and establish appropriate enforcement actions for failure to comply.

(7) Certify, in each contract proposal, that:

(i) There is in effect at that Institution a written and enforced administrative process to identify and manage, reduce or eliminate Significant Financial Interests of the type described in paragraph (e)(1) of this part with respect to all research projects for which funding is sought from the PHS.

(ii) The Institution either has, or has not found a Significant Financial Interest of the type described in paragraph (e)(1) of this part and, where such interest is found, certify that actions have been taken to manage, reduce or eliminate that interest in accordance with this part.

(iii) The Institution agrees to make information available, upon request, to the HHS regarding all Significant Financial Interests identified by the Institution of the type described in paragraph (e)(1) of this part and how those interests have been managed, reduced, or eliminated to protect the research from bias;

(iv) the Institution will otherwise comply with this part.

(8) (i) Notify the PHS Awarding Component of the identification and management, reduction or elimination of any Significant Financial Interest, of the type described in Sec. 94.5(a) of this Part that did not exist or was not known at the time of the proposal, within sixty days of its becoming aware of that Interest.

(ii) HHS may at any time request submission of, or review on site, all records pertinent to these certifications. To the extent permitted by law, the PHS will maintain all records of financial interests confidentially.

(iii) An investigator may participate in a PHS-funded research project that is being simultaneously supported by an organization that has a commercial interest in the outcome of the project. However, the research support must be provided through the PHS awardee Institution. Any direct compensation or payment to the Investigator under that support is considered a financial interest under this part.

**§ 94.5 Management of Significant Financial Interests.**

(a) Institutions seeking PHS funding for research shall ensure that the following types of Significant Financial Interests attributable to an Investigator are managed, reduced, or eliminated, in accordance with paragraph (b) of this section, prior to award of the contract:

(i) Any Significant Financial Interest of the Investigator that would reasonably appear to be directly and significantly affected by the research funded by PHS, or proposed for funding; and

(ii) Any Significant Financial Interest of the Investigator in an entity whose financial interest would reasonably appear to be directly and significantly affected by the research funded by PHS, or proposed for funding.

(b) In addition to the types of Significant Financial Interests described in this paragraph that must be managed, an Institution may require the management of other financial interests as the Institution deems appropriate.

(c) The designated official(s) must review all financial disclosures, determine whether Significant Financial Interests could affect the design, conduct, or reporting of the research activities funded by PHS, or proposed for such funding, and determine what conditions or restrictions, if any, should be imposed by the institution to manage such interests. Examples of conditions or restrictions that might be imposed to manage actual or potential conflicts of interest include:

(1) Public disclosure of significant financial interests;

(2) Monitoring of the research by independent reviewers;

(3) Modification of the research plan;

(4) Disqualification from participation in all or a portion of the research funded by the PHS;

(5) Divestiture of significant financial interests, or;

(6) Severance of relationships that create actual or potential conflicts.

**§ 94.6 Remedies.**

(a) Each Institution that submits a research contract proposal must include in its policy for the identification and management of Significant Financial Interest procedures for enforcement action against employees who do not comply with the Institution's policy. If the failure of an employee to comply with the policy of the Institution has biased the design, conduct, or reporting of the PHS-funded research, the Institution must promptly notify the PHS Awarding Component of the corrective action taken. The PHS Awarding Component will consider the situation and, as necessary, take appropriate action or refer the matter to the Institution for further action, which may include directions to the Institution on how to maintain appropriate objectivity in the funded project.

(b) The HHS may inquire into the Institutional procedures and actions regarding financial interests in PHS-funded research, including the disposition of a particular financial interest. Such inquiry may be initiated based on information obtained by the HHS under this part, from a procurement-related document (proposal, progress report, publication of results) or any other source. Based on a specific inquiry, the HHS may decide that a particular Significant Financial Interest of the type described in section 4 § 94.4 is so sensitive that the issuance

of a Stop Work Order by the Contracting Officer may be necessary until the matter is resolved.

(c) In any case in which the Department determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a Significant Financial Interest that was not disclosed or managed as required by this part, the Institution must require disclosure of the financial interest in each public presentation of the results of the research.

[FR Doc. 94–15500 Filed 6–27–94; 8:45 am]
BILLING CODE 4140–01–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### 43 CFR Part 426

[RIN Number 1006–AA33]

### Acreage Limitation Rules and Regulations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Reclamation Reform Act of 1982 (RRA), as amended, requires landholders (landowners and lessees) to meet certain requirements in order to be eligible to receive irrigation water from Bureau of Reclamation (Reclamation) projects. The purposes of the proposed rule are to improve compliance with the form submittal requirements of the RRA and the Acreage Limitation Rules and Regulations (43 CFR Part 426), help ensure that irrigation water is delivered only to eligible landholders, and recoup administrative costs Reclamation incurs in conjunction with noncompliance with these requirements. The proposed rule revises the existing rules by adding a section that will impose fees on districts when statutory and regulatory requirements concerning the submittal of forms are not met.

**DATES:** Comments must be submitted on or before August 29, 1994.

**ADDRESSES:** Written comments must be submitted to J. William McDonald, Assistant Commissioner—Resources Management, Bureau of Reclamation, Attention: D–5640, P.O. Box 25007, Denver, CO 80225.

**FOR FURTHER INFORMATION CONTACT:** Gary Anderson, Chief, Reclamation Law Administration Branch, Bureau of Reclamation, Attention: D–5640, P.O. Box 25007, Denver, CO 80225, Telephone: (303) 236–1061, extension 221.

**SUPPLEMENTARY INFORMATION:** The RRA limits the amount of owned land on which a landholder can receive irrigation water and places a limit on the amount of leased land that can receive such water at a subsidized water rate. In order to ensure compliance with the ownership limitations and the limitations on subsidies, certain statutory and regulatory requirements must be met.

One of these requirements applies to all landholders whose landholdings in districts subject to the acreage limitation provisions total more than 40 acres. These landholders must complete RRA certification or reporting forms prior to receipt of irrigation water. The forms must be completed annually and submitted to each district in which the landholder receives irrigation water. Landholders must disclose on the forms all the land they own and lease directly or indirectly in Reclamation projects that are subject to the acreage limitation provisions. The forms must be resubmitted whenever a landholding change occurs. If a landholding does not change, a verification statement to that effect must be submitted each year.

While the RRA and 43 CFR Part 426 set limits on the receipt of irrigation water and establish requirements that must be met in order to receive such water, the current rules do not address situations in which water has been delivered to landholders who failed to meet all the requirements. These situations were not addressed because the RRA does not contemplate such deliveries.

Districts, rather than Reclamation, generally control the deliveries of irrigation water to landholders. Pursuant to their contracts with the United States, the districts are legally obligated not to deliver irrigation water to landholders who do not meet the eligibility requirements in the RRA.

With respect to the form requirements discussed previously, 43 CFR 426.10(k) specifically states that failure by landholders to submit the required certification or reporting form(s) will result in loss of eligibility to receive irrigation water. However, during its water district reviews, Reclamation has found that in some instances, districts have delivered irrigation water to landholders who had failed to meet the form requirements and other requirements of the law and rules.

In 1988, Reclamation adopted a compensation policy whereby full-cost charges were assessed for irrigation water that had been delivered to ineligible landholders. This policy is based on the legal theory that when irrigation water is delivered to ineligible recipients, it is an unlawful conversion of the Government's property interest in the water, and the Government is therefore entitled to be compensated for the conversion. Since Reclamation cannot recover the water that was delivered to the ineligible recipients, it has been Reclamation's position that it is entitled to recover the value of its property interest in that water and that the full-cost water rate prescribed in the RRA is an appropriate measure of the water's value.

When the new administration came into office in 1993, Reclamation decided to review certain agency policies, one of which was the full-cost compensation policy for RRA form violations. The Commissioner of Reclamation asked the Department of the Interior's Office of the Solicitor whether Reclamation is permitted to impose charges other than full-cost compensation charges for such violations. In a July 23, 1993, memorandum, the Associate Solicitor, Division of Energy and Resources, advised the Commissioner that several laws "* * * authorize Reclamation to promulgate regulations necessary to carry out its mission, including those which would assess fees. This means that Reclamation may, by regulation, impose administrative fees or other charges designed to recover the costs it incurs for processing improperly submitted forms or for collecting forms from those who have not submitted them." The Associate Solicitor further concluded that "* * * Reclamation has considerable discretion in determining how to calculate those costs, so long as the charges imposed bear a demonstrable relationship to the costs incurred by the agency and have the intended effect of improving compliance with the Act and achieving congressional objectives."

Based on the Associate Solicitor's conclusions, Reclamation decided to consider the imposition of assessments to recover its administrative costs. Under this approach, an assessment would be established based on the costs incurred by Reclamation for additional actions the agency must take to correct instances of noncompliance. An average cost per violation would be determined and applied uniformly throughout Reclamation projects. The assessments would provide an equitable method for addressing RRA violations and result in charges that are reasonable, while recovering the incremental costs Reclamation incurs. In addition, even though such assessments would be

applied after a violation had taken place, they would provide an incentive for landholders and districts to comply in upcoming water years. Thereby, the assessments would help to ensure that ineligible landholders do not receive irrigation water.

After reviewing the concept of assessments for administrative costs, Reclamation decided to revise the current rules to provide for such assessments. However, before initiating the rulemaking, Reclamation notified the public of its intent and asked for their comments. (See *58 FR 59427*, Nov. 9, 1993.)

*Summary of Comments*

During the comment period, 32 responses were received. Most responses were submitted by district personnel or attorneys representing districts or other water user organizations; some individual landholders also submitted comments. Approximately 50 percent of the respondents approved of Reclamation's intent to establish the proposed assessments. The remaining 50 percent were either opposed to the concept or did not express a strong position on the matter.

The most frequently expressed comment was that the assessments should not be based on the full-cost water rate as that term is defined in the RRA. Many respondents gave suggestions for establishing the proposed assessments; they are summarized in the following list.

The respondents thought the assessments should be:

1. fair;
2. reasonable;
3. uniform throughout Reclamation projects;
4. related to
   (a) the severity of the violation,
   (b) the number of acres involved in the violation,
   (c) the costs incurred by the Government to enforce the RRA,
   (d) the purposes of the RRA,
   (e) the number of previous offenses by landholders and districts,
   (f) costs other than Reclamation's audit costs;
5. minimal because
   (a) the RRA is complex,
   (b) sometimes Reclamation is at least partially responsible for the offense;
6. limited to cases where
   (a) water is delivered to landholders that failed to submit RRA forms,
   (b) water is delivered to excess land,
   (c) water users are pumping more water than Reclamation law or the district contract allows;
7. applied
   (a) prospectively only,
   (b) only after landholders and districts have been given a grace period in which to correct the problem,
   (c) only if an error was intentional,
   (d) within a reasonable amount of time after the offense occurred;
8. subject to an appeals and/or hearing process;
9. assessed to the districts;
10. assessed to the involved landholders;
11. collected by Reclamation;
12. credited to districts' contract obligations.

In addition to the above comments, some respondents questioned Reclamation's authority to impose assessments for administrative costs. A few respondents also questioned whether the assessments will have the intended effect of improving compliance with the requirements of the RRA. One respondent commented that Reclamation should not use the assessments to replace the current requirement that landholders must submit an RRA form as a condition for receipt of irrigation water. Another stated that RRA compliance levels would improve if Reclamation conducted water district reviews and district training sessions more frequently. Two respondents requested Reclamation to increase the 40-acre threshold for exemption from the RRA form requirements, while another requested that the current class 1 equivalency provisions be revised.

Reclamation received several suggestions for establishing the amount of the assessments. Two respondents thought the assessment should be $100 for instances where RRA forms contain minor errors. One suggested that in cases where form errors are more significant; for example, failure to disclose land held in excess of a non-full-cost entitlement, the full-cost rate plus a $2,000 fee should be charged. Another suggestion was that Reclamation should ask Congress to pass legislation authorizing the agency to charge twice the full-cost rate if irrigation water is delivered to excess land.

All comments were considered during preparation of the proposed rule except for those relating to the forms exemption threshold, equivalency provisions, deliveries to excess land, water district reviews, and RRA training. These topics are outside the scope of the subject rulemaking.

*Summary of Proposed Rule*

The proposed rule provides for the imposition of assessments for administrative costs incurred by Reclamation in conjunction with noncompliance with the form requirements. A district will be assessed for administrative costs when RRA forms are not submitted prior to receipt of irrigation water. The assessment will be applied on a yearly basis in each district for each direct and indirect landholder that failed to comply with the form requirements. A district will also be assessed for administrative costs when corrections to RRA forms are not provided within a 45-day grace period. The assessment will be applied on a yearly basis in each district for each direct and indirect landholder for which corrected forms are not provided within the grace period. These assessments for administrative costs will replace the full-cost charges that Reclamation currently assesses for form violations pursuant to its compensation policy. The administrative cost assessments will not be subject to the underpayment interest component as set forth in § 426.23.

The assessment for administrative costs is initially set at $260 per form violation. The amount is based on a review of the costs Reclamation incurred in 1991, 1992, and 1993 performing activities to address RRA form violations. The assessment reflects the average direct and indirect costs incurred Reclamation-wide for: (1) communicating with district representatives or landholders to obtain missing or corrected forms, (2) assisting landholders in completing certification or reporting forms for the period of time they were not in compliance with the form requirements, (3) performing onsite visits to determine if irrigation water deliveries have been terminated to landholders that failed to submit the required forms, and (4) performing other activities necessary to address form violations. The assessment will be reviewed at least once every 5 years and, if needed, will be adjusted to reflect new cost data.

As with other assessments, districts will be held responsible for payment of the assessments because of their contractual obligation with the United States. As required by 31 U.S.C. 3302, charges collected through the imposition of assessments for administrative costs will be credited to the general fund of the Treasury as miscellaneous receipts.

Payment of the assessments set forth in the proposed rule does not exempt districts and landholders from the form requirements of the RRA or Acreage Limitation Rules and Regulations. Districts are not permitted to continue water deliveries to ineligible recipients simply because they are willing to pay

the assessments. Reclamation will take all necessary actions to prevent the delivery of irrigation water to ineligible land.

The Department of the Interior has determined that the proposed rule does not constitute a significant regulatory action under Executive Order 12866 because it will not: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

**National Environmental Policy Act**

Neither an environmental assessment nor an environmental impact statement is required for this rulemaking because, pursuant to 40 CFR 1508.4 and Departmental Manual part 516 DM 6, Appendix 9, § 9.4.A.1, this action is categorically excluded from the provisions of the National Environmental Policy Act.

**Paperwork Reduction Act**

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as is required by 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1006–0005 and 1006–0006.

**Small Entity Flexibility Analysis**

The proposed rule will not have a significant economic effect on a substantial number of small entities.

**Civil Justice Reform**

The Department of the Interior has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

**Authorship**

This proposed rule was prepared by staff in the Reclamation Law Administration Branch, D–5640, Bureau of Reclamation, Denver, Colorado.

**List of Subjects in 43 CFR Part 426**

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, it is proposed to amend 43 CFR Part 426 as follows:

Dated: May 16, 1994.

**Elizabeth Ann Rieke,**

*Assistant Secretary—Water and Science.*

## PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

1. The authority citation for Part 426 is revised to read as follows:

**Authority:** 43 U.S.C. 371–383; 43 U.S.C. 390aa-390zz-1; 31 U.S.C. 9701.

2. Section 426.24 is redesignated as § 426.25, and new section 426.24 is added to read as follows:

**§ 426.24 Assessments of administrative costs.**

(a) *Forms submittal.* A district will be assessed for the administrative costs described in paragraph (e) of this section when irrigation water has been delivered to landholders that did not submit certification or reporting forms prior to the receipt of irrigation water in accordance with § 426.10(e). The assessment will be applied on a yearly basis in each district for each direct and indirect landholder that received irrigation water but failed to comply with § 426.10(e).

(b) *Forms corrections.* Where corrections are needed on certification or reporting forms, the requirements of § 426.10(a) will be deemed to have been met so long as the district provides corrected forms to the Bureau of Reclamation within 45 days of the date of the Bureau's written request for corrections. A district will be assessed for the administrative costs described in paragraph (e) of this section when corrected forms are not provided within this 45-day time period. The assessment will be applied on a yearly basis in each district for each direct and indirect landholder for whom corrected forms are not provided within the applicable 45-day time period.

(c) *Parties responsible for paying assessments.* Districts shall be responsible for payment of the assessments described in paragraphs (a) and (b) of this section.

(d) *Disposition of assessments.* The administrative costs assessed and collected pursuant to paragraphs (a) and (b) of this section will be deposited to the general fund of the United States Treasury as miscellaneous receipts.

(e) *Assessment for administrative costs.* The assessment for administrative costs shall initially be set at $260. This is based on an average of the direct and indirect costs the Bureau of Reclamation incurs performing activities to obtain certification or reporting forms from landholders that failed to submit such forms prior to receipt of irrigation water and form corrections that are not submitted by the designated due date. This initial $260 assessment for administrative costs will be reviewed at least once every 5 years and adjusted, if needed, to reflect new cost data based upon the Bureau's costs for communicating with district representatives and landholders to obtain missing or corrected forms; assisting landholders in completing certification or reporting forms for the period of time they were not in compliance with the form requirements; performing onsite visits to determine if irrigation water deliveries have been terminated to landholders that failed to submit the required forms; and performing other activities necessary to address form violations. Notice of the revised assessment for administrative costs will be published in the **Federal Register** in December of the year the data are reviewed.

[FR Doc. 94–15509 Filed 6–27–94; 8:45 am]

BILLING CODE 4310–94–P

## DEPARTMENT OF DEFENSE

### 48 CFR part 211, 227, and 252

### Federal Acquisition Regulation Supplement; Rights in Technical Data

**AGENCY:** Department of Defense (DoD).

**ACTION:** Correction of proposed rule with request for comments.

**SUMMARY:** This action is to correct the address for submission of written comments for the proposed rule on Rights in Technical Data, which was published in the **Federal Register** on June 20, 1994 (59 FR 31584).

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena Moy, telephone (703) 604–5385/6.

**Claudia L. Naugle,**

*Deputy Director, Defense Acquisition Regulation Council.*

Accordingly, the Department of Defense is correcting the proposed rule on Rights in Technical Data as follows:

On page 31584, column 3, the first sentence of the paragraph entitled **ADDRESSES:** is corrected to read:

"Interested parties should submit written comments to: Deputy Director Major Policy Initiatives, 1211 S. Fern St., Room C–109, Arlington, VA 22202–2808, ATTN: Ms. Angelena Moy, OUSDA (A&T)/DDP."

[FR Doc. 94–15647 Filed 6–27–94; 8:45 am]
BILLING CODE 3810–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1831 and 1852

### Revision to NASA FAR Supplement Coverage on Precontract Costs

**AGENCY:** Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rule proposes to amend the regulations pertaining to precontract costs to specify the content of letters to contractors which authorize the incurrence of precontract costs, make clear the circumstances when precontract costs would be appropriate, and clarify that precontract costs are not allowable unless the clause "Precontract Costs" is included in the contract. In addition, the proposed rule revises the prescription for the clause to allow its use in other than cost-reimbursement contracts. Also, the rule proposes to change the title of that clause from "Date of Incurrence of Costs" to "Precontract Costs" to more accurately reflect its purpose.

**DATES:** Comments must be received on or before August 29, 1994.

**ADDRESSES:** Submit comments to Mr. Joseph Le Cren, Contract Pricing and Finance Division (Code HC), Office of Procurement, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Le Cren, (202) 358–0444.

**SUPPLEMENTARY INFORMATION:**

**Background**

Although NASA has used authorization letters for precontract costs for many years, there has been little standardization in the contents of the letters. In addition, the current NASA FAR Supplement coverage at 1831.205–32 does not make it clear when the use of precontract costs would be appropriate, or that the clause at 1852.231–70 is required to be in the contract in order for precontract costs to be allowable. In addition, the clause prescription incorrectly states that the clause only should go in cost-reimbursement contracts. The clause would also be applicable to fixed-price incentive or redeterminable contracts and to terminated firm-fixed price contracts, as the cost principles at (FAR) 48 CFR Subpart 31.2 would be applicable. The proposed rule specifies the information to be included in precontract cost authorization letters to contractors, identifies when the use of precontract costs would be appropriate, as well as requires the clause at 1852.231–70 be used for precontract costs to be allowable. The proposed rule also retitles the clause at 1852.231–70 from the "Date of Incurrence of Costs" to "Precontract Costs" to more accurately reflect the purpose of the clause.

**Impact**

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork reduction Act.

**List of Subjects in 48 CFR Parts 1831 and 1852**

Government procurement.

**Tom Luedtke,**

*Deputy Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1831 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1831 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 1831.205–32 is revised to read as follows:

**1831.205–32 Precontract costs.**

(a) The authorization of precontract costs is not encouraged and shall be granted only when there will be a sole source award or a single offeror has been selected for negotiations as the result of a competitive procurement, the criteria at (FAR) 48 CFR 31.205–32 are met, and a written request and justification has been submitted to and approved by the procurement officer. The justification shall (1) substantiate the necessity for the contractor to proceed prior to contract award, (2) specify the start date of such contractor effort, (3) identify the total estimated time of the advanced effort, and (4) specify the cost limitation.

(b) Authorization to the contractor to incur precontract costs shall be in writing and shall (1) specify the start date of incurrence of such costs, (2) specify a limitation on the total amount of precontract costs which may be incurred, (3) state that the costs are allowable only to the extent they would have been if incurred after the contract had been entered into, and (4) state that the Government is under no obligation to reimburse the contractor for any costs unless a contract is awarded.

(c) Precontract costs shall not be allowable unless the clause at 1852.231–70, Precontract Costs, is included in the contract.

3. Section 1831.205–70 is revised to read as follows:

**1831.205–70 Contract clause.**

The contracting officer shall insert the clause at 1852.231–70, Precontract Costs, in contracts for which specific coverage of precontract costs is authorized under 1831.205–32.

4. Section 1852.231–70 is revised to read as follows:

**1852.231–70 Precontract costs.**

As prescribed in 1831.205–70, insert the following clause:

**Precontract Costs**

(XXX 19XX)

The contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $ _____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

[FR Doc. 94–15606 Filed 6–27–94; 8:45 am]
BILLING CODE 7510–01–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 575

**[Docket No. 91–68; Notice 03]**

**RIN 2127–AC64**

### Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Prevention

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking (Consumer Information Regulation); Termination of rulemaking (Federal Motor Vehicle Safety Standard).

**SUMMARY:** As part of its comprehensive efforts to address the problem of light vehicle rollover, this agency is

proposing a new consumer information regulation that would require that passenger cars and light multipurpose passenger vehicles and trucks be labeled with information about their resistance to rollover. This information would enable prospective purchasers to make choices about new vehicles based on differences in rollover risk; motivate manufacturers to give more priority to rollover stability in designing their vehicles; and inform motorists that they can reduce the risk of injury in a rollover by wearing their safety belts. NHTSA believes that this would reduce the number of injuries and fatalities from rollover accidents.

**DATES:** *Comment Date:* Comments must be received by August 29, 1994.

**ADDRESSES:** Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

**FOR FURTHER INFORMATION CONTACT:** Gayle Dalrymple, Office of Vehicle Safety Standards, NRM–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5559.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. The Rollover Crash Problem

Rollover crashes occur for many reasons, and involve the interaction of a variety of factors including the driver, the roadway, the vehicle, and environmental conditions. The relationship of these various factors to rollover crashes can be examined by analyzing data from various sources.

The agency estimates that there were 220,000 rollover crashes involving passenger cars, and multipurpose passenger vehicles and trucks under 4,536 kilograms (10,000 pounds) gross vehicle weight rating (collectively, "light trucks") in 1991. These resulted in 9,186 fatalities; 56,000 occupants of these vehicles received serious, incapacitating injuries. These numbers have remained relatively constant over the past six years. Ejections are responsible for 63 percent of the fatalities. Safety belts are used by only 13 percent of the fatally injured occupants.

Of the 220,000 rollover crashes, 207,000, or 94 percent, were single vehicle crashes and 192,000 of these, or 93 percent, occurred off the road. Various accident studies have indicated that loss of vehicle directional control is a prelude to rollover in 50 percent to 80 percent of all rollover crashes.

For the years 1985–1991, small cars had the greatest number of rollover fatalities, followed by standard-size pickup trucks. However, pickup trucks and sport utility vehicles have fatality rates per million registered vehicles between two and three times as great as that of passenger cars. The difference between the numbers of rollover fatalities and the rollover fatality rates for particular vehicle types is a result of the relative proportions of various types of vehicles in the fleet. There are currently many more small cars than pickup trucks and sport utility vehicles on the road today.

(A more extensive discussion of rollover statistics, and the sources for this information, can be found in the "Addendum to Technical Assessment Paper," NHTSA 1994, which is in Docket No. 91–68, Notice 03.)

## II. Relationship to Other Agency Activities

### *A. Agency Efforts To Address the Rollover Crash Problem*

The agency believes that no single type of rulemaking or other agency action could solve all, or even a majority of, the problems associated with rollover. Accordingly, it is pursuing a broad range of actions to address those problems.

First, NHTSA has published an NPRM to reduce the potential for injuries to the head from contact with upper interior components (58 FR 7506, February 8, 1993). The comment period was reopened to December 1, 1993 (58 FR 54099, October 20, 1993) and a public hearing was held on November 15, 1993. As explained in the Addendum to Technical Assessment Paper, NHTSA's research indicates that head injuries are the most prevalent type of injury associated with rollovers. The agency expects to issue a final rule on this subject in late 1994.

Second, with respect to anti-lock brake systems, the agency has published an advance notice of proposed rulemaking (ANPRM) for light duty vehicles (January 4, 1994, 59 FR 281). ("Light duty vehicles" include cars, vans, pickup trucks and sport utility vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less.) Since most vehicles involved in rollovers lose their longitudinal stability before leaving the roadway, where they then trip and roll over, and since anti-lock brake systems are designed to enhance the longitudinal stability of a vehicle, a requirement for anti- lock brakes could reduce the number of rollovers. NHTSA's preliminary evaluation of rear-wheel anti-lock brake systems, the type of anti-lock brakes most often found on light trucks, indicates that anti-lock brakes on light trucks are effective in reducing the number of nonfatal single vehicle accident rollovers for almost every type of truck, under any type of road condition. Reductions of single vehicle accident rollovers were typically in the range of 30 percent to 40 percent. NHTSA is continuing to analyze the data and a comprehensive report of the findings will be published at a later date. (The preliminary evaluation is available in Docket No. 70–27–GR–026.)

Third, as noted above, ejections are a frequent occurrence in fatal rollover crashes. To attempt to reduce the

frequency of ejections, the agency is conducting research on glass/plastic side windows and improved door latches. Preliminary research results should be available within the next year to enable NHTSA to determine if rulemaking should be pursued in these areas.

Fourth, the agency is conducting research on improvements to vehicles' roof strength that could reduce head and neck injuries. A decision whether to begin rulemaking on this subject is expected in 1994.

Fifth, as noted above, safety belt use is very low among persons fatally or seriously injured in rollover crashes. NHTSA promotes increased use of safety belts through public awareness and education efforts and by supporting the implementation and enforcement of state safety belt use laws. Agency occupant protection awareness and education activities include national media campaigns; outreach through national health, medical, civic, and intergovernmental organizations; and, administration of Section 402 state highway safety program funds. The agency promotes effective state safety belt usage laws by conducting evaluation studies and demonstration projects, training law enforcement personnel, and by administering the Section 153 state incentive grant program.

In addition, NHTSA has contracted with the Advertising Council to prepare two "Vince and Larry℠" (the agency's safety belt "spokespersons") public service announcements (PSAs) for television, and one "Vince and Larry℠" PSA for radio, on the specific benefits of safety belts in rollover crashes. One of the television PSAs and the radio PSA were available at the end of March, 1994. The other television PSA will be available approximately six months later. These safety belt initiatives will supplement the other actions to address the rollover problem.

Sixth, it is well known that rollover crashes have a high incidence of alcohol involvement. The agency has numerous programs and activities aimed at reducing alcohol-related crashes, injuries, and fatalities, which follow two fundamental strategies: information-education (such as Advertising Council PSAs on television) and laws-enforcement-sanctions (such as .08 BAC, sobriety checkpoints, and increasingly severe sanctions for repeat offenders). Section 410 grants to states provide incentives to states to use these strategies. These combined strategies have been effective as alcohol-related fatalities have decreased 30 percent over the past 10 years.

Seventh, and finally, the agency is issuing this notice regarding vehicle stability requirements and consumer information.

*B. Consumer Information Activities*

NHTSA believes that consumer and manufacturer behavior can be affected through the provision of consumer information regarding vehicle safety. The agency's experience with the New Car Assessment Program (NCAP) demonstrates the power of consumer information. Under the NCAP Program, the agency tests the ability of vehicles to protect their front seat occupants in frontal crash tests. The tests are similar to those conducted under Standard No. 208, *Occupant Protection*, to determine whether vehicles meet the Standard's injury criteria, except that the Standard's tests are conducted at 30 mph, while NCAP tests are conducted at 35 mph. Several manufacturers have informed the agency that they view it as important to perform well in the NCAP tests, even though there is no regulatory requirement to do so. The decline in the injury scores in NCAP tests over time for all manufacturers, as reported in "Report on the Historical Performance of Different Auto Manufacturers in the New Car Assessment Program Tests," NHTSA, August 1993, can also be attributed partially to NCAP.

The agency believes that further safety improvements could be gained through providing consumers with information about additional aspects of new vehicle safety performance. NHTSA recently conducted a series of 15 focus groups, comprised of members of the public, to examine the type and format of desired consumer information about vehicle safety. (See "Focus Groups on Traffic Safety Issues: Public Response to NCAP," S.W. Morris & Company, Inc., August 1993, which can be found in Docket No. 79–17, Notice 01, or "New Car Assessment Program—Response to the NCAP FY 1992 Congressional Requirements," Report to the Congress, December 1993, which can be found in Docket No. 97–17, Notice 39). One of the topics examined was the current NCAP and how it could be improved. In response to the results of the focus group work, the agency has changed the format for NCAP test results. The new format responds to consumer demand for reporting results in a way that is less technical and easier to understand.

The focus groups also indicated that the agency's consumer safety information activities should be expanded to include additional kinds of crashes, including side impacts and rollovers. The potential importance of providing broader safety information about new light duty vehicle performance can be seen from figures regarding the proportion of fatalities in each of the three most important types of crashes. In 1991, frontal crashes accounted for 39 percent of all fatalities involving light duty vehicle occupants, rollover crashes for 30 percent, and side impact crashes for 25 percent. Together, these three types of crashes account for 94 percent of all fatalities. Information on performance in all three types of crashes could provide consumers with a comprehensive, balanced picture of the safety of new vehicles.

As part of its efforts to expand its consumer safety information programs, NHTSA has sought participation and guidance from the general public on the types and format of safety information to be provided to consumers. On January 3, 1994, the agency published a request for comments on whether to supplement the agency's efforts by holding a public meeting to discuss, among other items, the expansion of the NCAP program to other crash modes (59 FR 104).

Based on the foregoing, the agency plans to supplement this rollover proposal with a future proposal for requiring that each new vehicle have a window sticker providing information not only on vehicle rollover resistance, but also on frontal and side impact crash performance.

## III. Background

*A. Statutory Requirement for Rulemaking*

The NHTSA Authorization Act of 1991 (the Act) (part of the Intermodel Surface Transportation Efficiency Act) requires the agency to address several vehicle safety subjects through rulemaking. One of the subjects, set forth in section 2503(1), is protection against unreasonable risk of rollovers of passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

Section 2502(b)(2)(A) of the Act required that NHTSA publish, no later than May 31, 1992, an ANPRM or a notice of proposed rulemaking (NPRM) on this subject. The January 3, 1992, ANPRM fulfilled this mandate.

Section 2502(b)(2)(B)(i) of the Act provides that the agency must complete a rulemaking action on rollover within 26 months of publishing the ANPRM. The ANPRM was published on January 3, 1992; thus, this rulemaking action was to have been completed by March 3, 1994. Section 2502(b)(2)(B)(ii) of the Act provides that this rulemaking will

be considered completed when NHTSA either publishes a final rule or decides and announces that it is not promulgating a rule.

*B. ANPRM and Planning Document*

NHTSA announced in its January 3, 1992 ANPRM on the rollover problem that it was considering various regulatory actions to reduce the frequency of vehicle rollovers and/or the number and severity of injuries resulting from vehicle rollovers (57 FR 242). The agency requested comments on potential regulatory actions in the areas of: (1) Improved stability; (2) improved crashworthiness; and (3) consumer information. NHTSA said that it might issue a rule or rules in any one of these three categories, or in any combination of them.

The ANPRM discussed the agency's statistical analyses of the interaction of driver characteristics, vehicle stability metrics, roadway and environmental conditions. The notice described the following vehicle stability metrics as having a potentially significant role in vehicle rollover: center of gravity height; static stability factor; tilt table ratio; side pull ratio; wheelbase; critical sliding velocity; rollover prevention metric; braking stability metric; and percent of total vehicle weight on the rear axle. A vehicle stability metric is a measured vehicle parameter that presumably is related to the vehicle's likelihood of rollover involvement. To supplement the ANPRM, a Technical Assessment Paper that discussed testing activities, testing results, accident data collection, and analysis of the data was placed in the docket on January 6, 1992. A description of the individual metrics can be found in the Technical Assessment Paper.

(Note: For the remainder of this notice, "tilt table angle" is used in place of "tilt table ratio," regardless of the term used in any other document. NHTSA is using "tilt table angle" because the agency is proposing tilt table angle as one of the possible measurements to be used in the proposed consumer information regulation. Tilt table angle is the angle at which the last uphill tire of a vehicle lifts off a tilting platform. Tilt table ratio is the tangent of the tilt table angle and is believed to be harder for the average consumer to understand.)

During the development of the ANPRM and subsequent to receiving and analyzing comments to the ANPRM, it became obvious that no single type of rulemaking could solve all, or even a majority of, the problems associated with rollover. This view was strengthened by the agency's review and analysis of the comments on the ANPRM. To emphasize this conclusion and inform the public further about the complicated nature of the light duty vehicle rollover problem, the agency released a document titled "Planning Document for Rollover Prevention and Injury Mitigation" at a Society of Automotive Engineers meeting on rollover on September 23, 1992. The Planning Document gave an overview of the rollover problem and a list of alternative actions that NHTSA was examining to address the problem. Alternatives for regulatory action and a schedule for decisions on each were included. The current status of the presented alternative actions was discussed earlier in this notice. The document was placed in Docket No. 91–68; Notice 02, on the same day. NHTSA published a notice in the **Federal Register** announcing the availability of the Planning Document and requesting comment (September 29, 1992; 57 FR 44721).

*C. Comments on the ANPRM and the Planning Document*

Forty-two comments concerning the ANPRM and the Planning Document were received. A Summary of Comments was placed in the docket on September 15, 1993. Ten commenters addressed the Planning Document, eight of whom had also commented on the ANPRM. Responses to the Planning Document, for the most part, were abridged forms of the commenters' responses to the ANPRM.

All the commenting vehicle manufacturers asserted that, while stability metrics are statistically related to the rates with which single vehicle accidents result in rollovers, they are not causally related to rollover. Therefore, the manufacturers asserted, the agency cannot issue a regulation based on any one of these metrics solely because of its statistical correlation with accident data. Automotive Testing, BMW, Ford, GM, the American Automobile Manufacturers Association (AAMA, then known as the Motor Vehicle Manufacturers Association), and VW claimed that stability metrics are insufficient by themselves to explain a vehicle's degree of involvement in rollover crashes. These commenters stated that driver and environmental factors outweigh the contributions of vehicle factors to the likelihood of a single vehicle accident becoming a rollover. Nevertheless, most commenters addressed the relevancy of several of the individual metrics the agency considered for a vehicle stability rulemaking.

Tilt table angle, one of the metrics being proposed in this notice, appeared to be more acceptable to the commenters than the other stability metrics. While side pull ratio was favored by Automotive Testing, Chrysler, GM, and Nissan, all these commenters also commented favorably on aspects of tilt table angle. Static stability factor was favored by only Perrone Forensic Consulting, who also commented favorably on tilt table angle. All other commenters who indicated a preference among the metrics discussed in the ANPRM favored tilt table angle. However, Chrysler, Ford, GM, Isuzu, and VW claim vehicle changes made to improve a vehicle's tilt table performance may degrade a vehicle's control and handling attributes. Chrysler said that the repeatability of results from the tilt table procedure was unknown. On the other hand, Advocates for Highway and Auto Safety, the International Organization of Motor Vehicle Manufacturers, and GM stated they believe that the procedure is repeatable. Chrysler and AAMA also commented that the tilt table test is not a standard practice and its measurement error has not been established.

Commenters did not respond directly to the idea of using critical sliding velocity, which is also being proposed for use in this notice. However, most manufacturers commented that center of gravity height (a measurement necessary to calculate critical sliding velocity) is difficult to measure and that the measurement is not repeatable. Therefore, according to these commenters, any metric which uses center of gravity height would be impracticable.

The commenters also focussed on crashworthiness improvements. By far the most favorable crashworthiness countermeasure cited by the commenters was increased seat belt use to prevent ejections. In general, commenters believe that more benefits could be gained through increased seat belt use than through any vehicle related crashworthiness or crash avoidance countermeasure. Some commenters also favored improved roof structures including roll bars or cages, but Ford, GM, Nissan, and VW believe the installation of a roll bar or cage raises the vehicle's center of gravity and decreases rollover stability. Other suggestions were for improved glazing, improved latch/lock/hinge systems for doors, anti-lock brakes, bumper height regulations, removal of drunk and otherwise impaired drivers from the road, stricter enforcement of speed limits, and improved public awareness of the causes of rollover crashes as ways to reduce rollover casualties.

Finally, Chrysler, GM, AAMA, and Toyota claimed that labeling vehicles

with a stability metric would be simplistic and could mislead consumers, giving them a false sense of security in a vehicle labeled with a high stability metric (i.e., a metric indicating comparatively high resistance to rollover). These commenters believe that consumers could consider the metric to be an absolute measure of rollover likelihood, regardless of driver behavior or roadway conditions.

## IV. Summary

### *A. Summary of Agency Decision Not To Propose a Vehicle Standard*

In analyzing whether to proceed with a vehicle stability rulemaking, the agency identified several criteria that had to be met before proposing a safety standard. First, the identified vehicle metrics had to have a causal relationship to the likelihood of rollover. For example, center of gravity height affects rollover likelihood; the color of the vehicle does not. Second, the metric had to have a statistical relationship to rollover frequency. Third, improvement in the metric should result in significant safety benefits at a reasonable cost without having the effect of necessitating the radical redesigning of one or more types of vehicles. As discussed below, the agency identified two metrics that met the first two criteria, but not the third.

To determine whether it was appropriate to propose a new vehicle safety standard, NHTSA examined the complex interactions between driver behavior, vehicle properties, and roadway characteristics which result in rollovers. The suitability of a vehicle safety standard based on rollover stability depends on the importance of rollover stability, as represented by a vehicle metric, relative to other rollover influences, such as vehicle handling properties, vehicle condition, the nature of the roadway and shoulder terrain, and driver behavior. The agency sought to determine whether vehicle stability metrics are significant variables in a statistical model of the risk of rollover. If they are, then a standard regulating stability might be justified, depending on the results of a comparison of benefits and costs for such a standard.

After analyzing a number of static and dynamic rollover metrics, the agency concluded that two vehicle metrics, tilt table angle and critical sliding velocity, can account for about 50 percent of the variability in rollover risk in single-vehicle accidents, after considering driver, roadway, and environmental factors. (Rollover risk is the number of single vehicle rollovers involving a particular make/model divided by the number of single vehicle crashes of all types involving the same make/model.) This statistical analysis was conducted on all light duty vehicles treated as a group. However, analysis of accident data indicated that certain subgroups of light duty vehicles are more likely to roll over than other subgroups. For example, sport utility vehicles and compact pickup trucks tend to be the most likely vehicles to roll over. Large passenger cars tend to be the least likely to roll over. The importance of this difference is that if significant benefits are to be achieved, then changes in the metric should be made that affect passenger cars since nearly 60 percent of rollover fatalities occur in those vehicles.

The agency's analysis showed that setting a performance level high enough to affect passenger cars, would require redesign of nearly all sport utility vehicles, vans, and pickup trucks. Using a single value of one of these metrics as the performance standard for all light duty vehicles would have resulted in the radical redesign of the characteristics many, and in some cases all, vehicles of certain classes. That degree of redesign would have raised issues of public acceptance and possibly even the elimination of certain classes of vehicles as they are known today.

To avoid this consequence, the agency then examined whether several values for these metrics, each applying to a different class of vehicles (e.g., one value for passenger cars and a different value for light trucks) would be feasible. Since the statistical analyses discussed above were conducted on all light duty vehicles treated as a group, it was necessary to determine whether either of the stability metrics exhibited sufficiently high levels of correlation to assure the agency that a requirement applying to only one class of vehicle would be expected to reduce the incidence of rollovers for vehicles in that class. As explained later in this notice, the agency found that the statistical correlations of the metrics with rollover accident data within a class of vehicles was not so consistent as for all vehicles grouped together. This weakening of the predictive ability of the metric is, to some extent, the result of the smaller range of the metric within any class of vehicles together with the inherent variability in the data. Based on this analysis, and the general analysis of costs and benefits discussed later, the agency determined that proposing a standard specifying one minimum stability value for cars and others for various classes of light trucks could not be justified.

The agency also determined that, considering the costs and benefits involved, proposing a safety standard specifying a single minimum stability value for both cars and light trucks could not be justified. While light trucks have lower stability measurements than cars do, the greatest number of rollover-related deaths and injuries occur in passenger cars because of their larger population size. Therefore, if the agency wished to set a stability minimum high enough to realize significant reductions in the number of fatalities in all light duty vehicles, it would have to set the minimum above the stability number of most light trucks. The costs of such a standard, in terms of the cost of vehicle redesign and the loss of consumer-desired attributes, were determined to be very high, as entire classes of light trucks would probably need to be substantially redesigned to meet such a standard. This redesign could result in the elimination of some vehicle types, e.g., sport utility vehicles, as they are known today.

Based on this analysis, NHTSA has decided not to propose a vehicle stability rule, and is deferring any further action on this subject until such time as information becomes available demonstrating the cost effectiveness of such a rule. The agency may reinitiate such a rulemaking upon receipt of such information. This termination of rulemaking on vehicle stability fulfills the statutory mandate of section 2502(b)(2)(B)(i). However, through the consumer information proposal being published today, and the other actions mentioned above, NHTSA is continuing to take a comprehensive approach to reducing rollover casualties.

### *B. Summary of Proposed Consumer Information Regulation*

While NHTSA is terminating rulemaking on a vehicle stability standard, NHTSA believes that the correlation between stability and rollover risk is significant enough to justify proposing a consumer information regulation to relieve the possibility of uninformed risk. The agency believes that informing consumers of the relative resistance of different vehicles to rollover will influence consumers to purchase more stable vehicles and encourage manufacturers to improve the stability of their vehicles. The agency believes that these results are possible based on its assessment of how consumers and manufacturers reacted to the provision of frontal crashworthiness information through the New Car Assessment Program.

The consumer information regulation being proposed by the agency would require manufacturers of passenger cars and light trucks to label their vehicles with information relating to rollover stability. To that end, manufacturers would be required to report a stability metric for each vehicle make/model to NHTSA by January 1 of each year. Manufacturers would decide how to group vehicle make/models for the purpose of reporting stability metrics for those groups. To ensure that the information is neither understated nor overstated, the reported stability metric would be measured with a specified procedure and an accuracy tolerance on reported data would be required. NHTSA would use the information reported by manufacturers to provide the manufacturers with the ranges of metrics for both passenger cars and light trucks by April 1 of each year. For comparison purposes, these ranges would be included on vehicle labels.

New vehicles manufactured after September 1, 1996 would be required to have a prescribed window label listing the metric of the labeled vehicle, the range of that metric for cars and the range for light trucks. In addition, prescribed language on the label would explain the significance of the metric, warn consumers that all vehicles can and do roll over, and remind consumers to always wear seat belts. The proposed regulation would also require manufacturers to include the information on the vehicle label in the vehicle's owner's manual.

The agency requests comment on whether or not the proposed vehicle label should be a permanent sticker, in addition to the window label which would be removed after first sale. If a commenter believes the label should be permanent, NHTSA requests comment on whether the permanent sticker should be required on all vehicles, or only some subset of vehicles with lower rollover stability. Finally, NHTSA requests suggestions on placement and size of a permanent sticker. A permanent sticker would be useful to purchasers of used vehicles and drivers of rental vehicles.

NHTSA is considering two metrics for providing information regarding rollover stability: critical sliding velocity and tilt table angle. Critical sliding velocity is a measure of the minimum lateral (sideways) vehicle velocity required to initiate rollover when the vehicle is tripped by something in the roadway environment, e.g., a curb. Tilt table angle is the angle at which the last uphill tire of the vehicle lifts off a platform as the platform is increasingly tilted.

NHTSA is proposing two different options for specifying stability information using these metrics. First, NHTSA may select one of the two metrics to appear on the label. For example, if the agency selected tilt table angle, it would require that the specific angle for each vehicle be shown on its label. Second, NHTSA may require the label to include a nonquantitative statement concerning the vehicle's rollover resistance based on one or both of the metrics. For example, instead of stating a specific angle, the label might use symbols such as one, two, or three stars.

## V. Agency Analysis of the Vehicle Stability Metrics

### *A. Identification of Vehicle Stability Metrics*

The agency has concluded that the two metrics with the best correlation to accident statistics are tilt table angle, a static measurement, and critical sliding velocity, a metric calculated from static and dynamic vehicle measurements and expressed as velocity, i.e., units of feet per second, miles per hour, or kilometers per hour.

Tilt table angle includes the influences of the vehicle's mass, center of gravity height, track width, and suspension movement, all of which are physically related to rollover stability. Because it does not require an independent measurement of center of gravity height, it is more practicable, less costly, and more repeatable than most static rollover metrics.

Critical sliding velocity includes the roll moment of inertia as well as the various static factors mentioned above in its calculation. The Technical Assessment Paper found critical sliding velocity alone to have less correlation with rollover accident statistics than tilt table angle, but found it to be a statistically significant addition to a model already containing tilt table angle. However, an error in the computation of critical sliding velocity was made in the Technical Assessment Paper. When the logistic regression was repeated with the correct critical sliding velocity values and data for more vehicle make/models and additional accident years, NHTSA found the correlation of critical sliding velocity to accident statistics for all light duty vehicles grouped together and for the light truck and passenger car categories to be better than that for tilt table angle. The Addendum to Technical Assessment Paper contains the corrected analysis.

### *B. Analysis of Importance of Factors*

#### 1. Additional Analyses Since the ANPRM

Since the ANPRM, new vehicles have been added to the data base and their metrics measured. Several make/models have been tested in different configurations to determine the range of metrics within a make/model, given the different available original equipment options. Also included are several make/models of trucks and vans with anti-lock brakes as standard equipment and several make/models of high sales volume passenger cars equipped with anti-lock brakes. A complete list of all vehicles measured to date, their tilt table angles and critical sliding velocities, and the ratio of the number of rollovers involving a particular vehicle model to the number of single vehicle accidents involving the same model (RO/SVA) in Michigan from 1986 through 1990 can be found in Docket 91–68, Notice 2.

#### 2. Predictive Power of the Metrics

The agency performed two types of analyses attempting to separate the influence of driver characteristics, road, and environmental variables in the accident data so that the effect of vehicle rollover stability could be isolated. A logistic regression analysis individually considered every accident in a very large data base. Make/models represented in a great number of accidents influenced the results more than make/models with fewer accidents. A linear regression analysis was also done on the rollover risk of make/models, adjusted for differences in driver and road characteristics within their individual accident data bases, but not weighted by differences in accident numbers. The two analyses are discussed in detail in the Addendum to Technical Assessment Paper.

These analyses were conducted using three statistical models: (a) A model containing only driver, roadway, and environmental characteristics; (b) a model containing driver, roadway, and environmental characteristics, and critical sliding velocity; and (c) a model containing driver, roadway, and environmental characteristics, and tilt table angle. For the purposes of comparison, the analyses were limited to accidents involving those make/models for which the agency had both tilt table angle and critical sliding velocity data. This results in an equal number of accidents, or observations (88,397), in each statistical model.

The logistic regression predicts whether a single vehicle accident will be a rollover based on the factors in a

particular model. Then the predicted outcomes of the individual accidents are compiled to predict a rollover risk (rollovers per single vehicle accident) for each of the 128 make/models for which the agency has data on both metrics. This predicted risk is then compared to the actual risk known from accident data on these make/models. Two numbers are presented in the table below for each of the statistical models. The first is the percent variability explained by the comparison of the rollover risk predicted by the logistic regression model and the actual rollover risk. The second number is the percentage of the variability unexplained by the model containing only driver, roadway, and environmental characteristics which is explained by the addition of either tilt table angle or critical sliding velocity. For example, the driver/road/environmental model leaves 77 percent of the variability in the data unexplained; 23 percent is explained. When tilt table angle was added to the model to represent vehicle stability, 65 percent of the variability in rollover risk was explained. The difference between the 77 percent unexplained variability in the driver/road variable model and the 35 percent unexplained variability of the driver/road variable plus tilt table angle model is 42 percent, which is 55 percent of the unexplained variability in the driver/road variable model (42 percent/77 percent). Slightly more than half of the variability unaccounted for by driver and road characteristics was explained by the addition of tilt table angle. Thus, the logistic regression analysis indicates that stability, as measured by tilt table angle, is an important predictor of the likelihood of a single vehicle accident becoming a rollover. Substitution of critical sliding velocity produced similar results. A complete discussion of the results of these analyses can be found in the Addendum to Technical Assessment Paper in the docket.

TABLE 1.—RESULTS OF LOGISTIC REGRESSION ANALYSIS FOR ALL VEHICLES FOR WHICH TILT TABLE ANGLE (TTA) AND CRITICAL SLIDING VELOCITY (CSV) ARE KNOWN

| Model | Percent variability explained | Percent variability explained, which is not explained by D/R/E only model |
|---|---|---|
| D/R/E only | 23 | NA |
| D/R/E & TTA | 65 | 55 |
| D/R/E & CSV | 75 | 68 |

The linear regression analysis also demonstrates the predictive power of tilt table angle and critical sliding velocity. This analysis showed that tilt table angle accounts for about 53 percent of the variability in rollover risk remaining after adjustment for differences in driver and road characteristics. The analysis showed that critical sliding velocity accounts for about 66 percent of the variability in rollover risk remaining after adjustments for driver and road characteristics. These compare to the 55 percent and 68 percent values found by logistic regression. These figures demonstrate that the two analytic methods are essentially in agreement regarding the statistical significance of stability metrics to the prediction of rollover.

The results of both the logistic and linear regression analyses performed by the agency suggest that a vehicle stability metric alone can account for approximately 50 percent of the variability in rollover risk in single vehicle accidents, for the population of make/models studied. While ideally it would be desirable to have these variables explain 100 percent of the remaining variability, such statistical correlations are almost never achieved. The agency views these analyses as demonstrating sound statistical and causal relationships between these variables and the likelihood of rollover. At the same time, the analyses show that other factors in addition to those analyzed are affecting rollover risk, as 35 percent to 25 percent of the variability in rollover risk is still unexplained after accounting for the driver, roadway, and tilt table angle or critical sliding velocity, respectively.

The above analyses used a Michigan accident data base combining passenger cars, pickup trucks, vans, and sport utility vehicles. As explained in section I, the rate of rollover fatalities and injuries per million registered vehicles is higher for sport utility vehicles and compact pickup trucks, but the absolute majority of harm occurs in passenger cars, because of their large numbers in use. In the current vehicle fleet, passenger cars generally have higher measured stability than light trucks. Thus, a safety standard requiring a minimum level of stability appropriate for all light duty vehicles would not be expected to affect many present or future small cars and therefore would not result in significant safety benefits. (For a further discussion of the problems associated with a minimum standard, see the section below entitled, "Estimate of the Costs of a Standard.")

Hence, the agency also examined the relative predictive capability of the stability metrics to rollover risk for passenger cars and light trucks separately, to investigate the possibility of setting a higher minimum level of stability for passenger cars. The results are shown in the table below, including a comparison to the results for all vehicles considered as a single group (see Table 1). As with the analysis of all vehicles considered as a single group, these analyses were limited to make/models for which both tilt table angle and critical sliding velocity were known.

TABLE 2.—RESULTS OF LOGISTIC REGRESSION ANALYSIS FOR VEHICLES BY CLASS

| Vehicle class | TTA as metric | | | CSV as metric | | |
|---|---|---|---|---|---|---|
| | Percent variability | | Percent explain | Percent variability | | Percent explain |
| | D/R/E only | + metric | | D/R/E only | + metric | |
| All vehicle | 23 | 65 | 55 | 23 | 75 | 68 |
| Lt. Truck only | 21 | 52 | 39 | 21 | 70 | 62 |
| Car only | 39 | 56 | 28 | 39 | 63 | 39 |

These results show that, while a good proportion of the variability remaining in the driver/road/environmental model is explained by either metric for the group containing all vehicles, when the vehicles are divided into classes, the results are not consistent. The inconsistency seen in the model results by vehicle class is, to some extent, the result of the smaller range of the metric within any subgroup of vehicles together with the inherent variability in the data. These analyses and the analyses of benefits and costs discussed later, indicate that different minimum standards for passenger cars and light trucks cannot be supported using either tilt table angle or critical sliding velocity.

**VI. Decision Not To Propose a Vehicle Stability Standard**

As discussed previously, NHTSA concluded that both of the vehicle metrics, tilt table angle and critical sliding velocity, were statistically and causally related to the likelihood of rollover in a single vehicle crash. To determine whether to propose a vehicle stability standard, NHTSA next compared the benefits and costs of such a standard. A detailed discussion of the benefits analysis can be found in "Potential Reductions in Fatalities and Injuries in Single Vehicle Rollover Crashes as a Result of a Minimum Rollover Stability Standard," which has been placed in Docket No. 91–68, Notice 03. A detailed discussion of the cost estimates can be found in the Preliminary Regulatory Evaluation, which has also been placed in Docket No. 91–68, Notice 03.

*A. Estimate of the Benefits of a Standard*

The agency made two basic estimates of benefits of a minimum standard for rollover stability. One was based on the reductions in RO/SVA predicted by the logistic regression model for increases in critical sliding velocity. The other was based on reductions in RO/SVA predicted for increases in tilt table angle. All other factors being equal, it is reasonable to expect an inverse relationship between rollover risk and either critical sliding velocity or tilt table angle. Thus, the higher the lateral sliding velocity necessary to trip a vehicle, the less likely it is to roll over, and vice versa. Similarly, the greater the angle necessary to tip a vehicle from the tilt table, the less likely it is to roll over, and vice versa.

To quantify the benefits of potential minimum standards for rollover stability, NHTSA examined the net prevention of fatalities and serious injuries associated with various minimum levels of critical sliding velocity and tilt table angle. Fatality and injury levels were estimated by using:

1. The reduction of the rollover risk predicted for increases in critical sliding velocity or tilt table angle;
2. The number of single vehicle accidents per registered vehicle expected to occur; and
3. The reduction in fatalities and/or injuries if a single vehicle accident does not result in a rollover.

The estimate of the benefits of a minimum stability safety standard incorporated several simplifying assumptions. First, the agency assumed that the severity of the accidents would be reduced but that the accidents would not be prevented. Because single vehicle rollover accidents are more severe than single vehicle non-rollover accidents, prevention of rollover reduces the number of serious injuries and fatalities. However, under this scenario, the total number of single vehicle accidents is assumed to remain constant. This assumption is somewhat pessimistic, because an unknown number of crashes would most likely be avoided. But the remaining assumptions used may tend to overestimate the benefits since NHTSA also assumed:

1. The numbers of rollover injuries and fatalities prevented would be proportional to the number of rollovers prevented, and
2. The fatality and injury rates of the late 1980s for the make/models which would be affected by a minimum standard will remain representative in the future.

The second assumption may overstate the benefits if increased safety belt use in the 1990s, as is the goal of NHTSA, reduces the overall harm from rollover accidents. That is, as belt use increases, rollover casualties decrease, even though the number of rollover crashes remains constant.

1. Rollover Risk Reduction

To estimate the reduction in the rollover risk that would be obtained by changing a vehicle metric, the agency used logistic regression to determine the sensitivity of rollover risk to changes in critical sliding velocity or tilt table angle. The outcome of each accident of the subject make/model in the data base was re-evaluated individually changing the stability metric but retaining the other vehicle, driver, and road characteristics present in the actual crash. A new RO/SVA ratio was determined on the basis of the predicted outcome of each accident.

To examine the sensitivity of the model to a change in critical sliding velocity, the agency divided the range of critical sliding velocities from 14.26 to 16.73 kilometers per hour (kph). The low end of this range is representative of vehicles in NHTSA's database with the lowest critical sliding velocity. The high end of this range is representative of a critical sliding velocity equivalent to the 1.20 value for static stability factor recommended in the Wirth petition (also equivalent to a tilt table angle of 46.4 degrees). (A discussion of the Wirth petition can be found in the ANPRM, 57 FR 242, 244–45.) The highest value in the range is greater than the proposed European tilt table angle limit of 44.3 degrees, and in the agency's judgement represents the highest practicable standard. A standard at the upper limit of the range would affect 1,648,000 vehicles manufactured in 1991, including 87 percent of compact sport utility vehicles, 100 percent of standard vans, and 31 percent of compact pickups.

The agency then divided this range into six even increments and calculated the RO/SVA for each increment for various classes of vehicles. Each successively higher increment represents an increase in critical sliding velocity of 0.41 kph. The agency then predicted the decrease in single vehicle accident rollovers for each incremental increase in critical sliding velocity. (See Table 3.)

TABLE 3.—SENSITIVITY OF RO/SVA TO CHANGES IN CSV IN KPH SIMULATED BY LOGISTIC REGRESSION MODEL FOR VEHICLES OF CSV <16.73 KPH

| Make/model | CSV range kph | | | | | | |
|---|---|---|---|---|---|---|---|
| | 14.26 | 14.68 | 15.09 | 15.50 | 15.91 | 16.32 | 16.73 |
| Compact SUVs | 0.434 | 0.420 | 0.406 | 0.391 | 0.378 | 0.364 | 0.350 |
| Standard SUVs | 0.347 | 0.334 | 0.320 | 0.307 | 0.294 | 0.282 | 0.269 |
| Compact Pickup | 0.355 | 0.341 | 0.328 | 0.314 | 0.301 | 0.288 | 0.276 |

TABLE 3.—SENSITIVITY OF RO/SVA TO CHANGES IN CSV IN KPH SIMULATED BY LOGISTIC REGRESSION MODEL FOR VEHICLES OF CSV <16.73 KPH—Continued

| Make/model | CSV range kph | | | | | | |
|---|---|---|---|---|---|---|---|
| | 14.26 | 14.68 | 15.09 | 15.50 | 15.91 | 16.32 | 16.73 |
| Minivan | 0.275 | 0.263 | 0.252 | 0.241 | 0.230 | 0.219 | 0.209 |
| Standard Van | 0.229 | 0.219 | 0.209 | 0.199 | 0.190 | 0.180 | 0.171 |

As an example, for vehicles with a critical sliding velocity between 14.26 and 16.73 kph, an increase of 12 percent in critical sliding velocity was predicted to decrease single vehicle accident rollovers of compact sport utility vehicles by about 13 percent, standard sport utility vehicles by about 15 percent, compact pickups by about 15 percent, and minivans by about 16 percent. There is only one standard van with a critical sliding velocity below 16.73 kph. Its rollover risk is predicted to decrease 17 percent if its critical sliding velocity were to increase 12 percent. A 12 percent increase in critical sliding velocity represents a change of 1.65 kph, or four increments. A complete discussion of these analyses can be found in the paper "Potential Reductions in Fatalities and Injuries in Single Vehicle Crashes as a Result of a Minimum Stability Standard" in the docket.

A similar analysis was done using tilt table angle. For tilt table angle, each increment was approximately equivalent to 0.75 degrees. For vehicles with a tilt table angle between 42 and 46.4 degrees (the equivalent of the critical sliding velocity range), an increase of 11 percent (also four increments, or 3.00 degrees) in tilt table angle was predicted to decrease single vehicle accident rollovers among compact sport utility vehicles by about 15 percent, standard sport utility vehicles by about 19 percent, compact pickups by about 17 percent, minivans by about 20 percent, and standard vans by about 22 percent. (See Table 4.)

TABLE 4.—SENSITIVITY OF RO/SVA TO CHANGES IN TTA SIMULATED BY LOGISTIC REGRESSION MODEL FOR VEHICLES OF TTA <46.4°

| Make/model | TTA range | | | | | | |
|---|---|---|---|---|---|---|---|
| | 42.0° | 42.8° | 43.5° | 44.3° | 45.0° | 45.7° | 46.4° |
| Compact SUVs | 0.465 | 0.448 | 0.430 | 0.413 | 0.396 | 0.380 | 0.363 |
| Standard SUVs | 0.293 | 0.278 | 0.264 | 0.249 | 0.236 | 0.223 | 0.210 |
| Compact Pickup | 0.406 | 0.388 | 0.370 | 0.353 | 0.336 | 0.319 | 0.302 |
| Standard Van | 0.178 | 0.168 | 0.158 | 0.148 | 0.139 | 0.130 | 0.122 |
| Minivan | 0.265 | 0.251 | 0.238 | 0.225 | 0.212 | 0.200 | 0.189 |

2. Predicted Single Vehicle Accident Rate

To estimate the number of single vehicle accidents in a hypothetical future vehicle population, NHTSA assumed that the future population would have the same proportion of vans, pickups, and sport utility vehicles as the 1991 production, and that the population would have the same proportion of high and low critical sliding velocity and tilt table angle vehicles within these categories.

NHTSA then distributed the numbers of serious injuries by vehicle category (as tabulated by Data Link Inc., under contract to NHTSA) among the 1991 example vehicles on the basis of relative production volume, relative single vehicle accident involvement rate, and relative rollover risk per single vehicle accident. (The Data Link reports are available in Docket 91–68, Notice 2.) Data Link reported injuries and fatalities by vehicle types: pickup truck, van, sport utility vehicle (called MPV in Data Link reports), and car. NHTSA further divided the vehicle types into subcategories of compact and standard to make average accident rate and rollover risk more meaningful.

NHTSA also divided injuries and fatalities between compact and standard versions of each vehicle type. To do this, NHTSA assumed that rollover harm was proportional to the number of rollover accidents within a vehicle type. The numbers of rollover accidents among compact vehicles relative to those among their standard counterparts were estimated by multiplying their 1991 production ratios by their single vehicle accident per registered vehicle ratios and their RO/SVA ratios. The total number of injuries and fatalities was then divided proportionally.

The reduction in rollover harm for each type/size category is a summary of the reductions in injuries and fatalities for each example vehicle within the category if the tilt table angle for the category were increased a specified level. The reduction in harm associated with each affected vehicle is assumed to be proportional to its projected reduction in rollover risk. A minimum tilt table angle standard of 42.8 degrees, an increase of one increment explained above, would be expected to reduce serious rollover injuries by 13 and rollover fatalities by 8. A minimum tilt table angle standard of 46.4 degrees, the highest measurement in the range studied, would be expected to reduce serious rollover injuries by 233 and rollover fatalities by 121, if rollover avoidance were viewed as crash avoidance. A parallel exercise was done using the rollover risk predicted using critical sliding velocity as the stability metric in the logistic regression model.

3. Injury/Fatality Rate Reduction

Because the agency assumed that a single vehicle accident would still occur even though a rollover was prevented, it reduced these estimates of benefits based on a comparison of the relative harm of single vehicle accidents with rollover to that of similar accidents without rollover. The comparison indicated that the overall fatality rate for single vehicle rollover accidents was 2.07 times the fatality rate for single vehicle accidents without rollover. When only accidents occurring on roads with speed limits of 40–50 mph are considered, the rollover accidents are 2.3 times as likely to result in fatality.

When accidents on 55–65 mph roads are considered, the fatality rate of rollover accidents is 1.6 times that for other accidents. These statistics suggest that rollover prevention is equivalent to about a 50 percent reduction in fatalities for the number of accidents in which rollovers would be prevented.

Likewise, the injury data indicate an overall relative rate of serious injuries (AIS 3+) 1.36 times greater for single vehicle accidents with rollover than without rollover. The ratio of AIS 3+ injuries in non-rollover to AIS 3+ injuries in rollovers was 1.38 for accidents occurring on roads with speed limits of 40–50 mph and 1.47 for accidents occurring on 55–65 mph roads. These statistics suggest that rollover prevention is roughly equivalent to a 25 percent reduction in serious injuries for the number of accidents in which rollovers would be prevented.

Viewing rollover prevention as roughly a 50 percent mitigation of fatalities and a 25 percent mitigation of serious injuries leads to an estimate of net benefits resulting from the reduction in harm from rollover accidents. Net reductions of 3 to 61 serious injuries and 4 to 63 fatalities would be expected for a minimum tilt table angle standard in the range of 42.8 to 46.4 degrees. Net reductions of 3 to 68 serious injuries and 2 to 68 fatalities would be expected for a minimum critical sliding velocity standard in the range studied, i.e., 14.68 to 16.73 kph.

Minimum rollover stability requirements at the levels examined would have minimal impact on the annual single vehicle accident rollover fatality toll, because the vehicles affected would be less than 20 percent of the total light duty vehicle fleet and the vehicles' stability would only be improved by a marginal amount.

The great majority of rollover fatalities would be unaffected by a minimum stability standard set at any of these levels, because they occur in cars, which greatly outnumber light trucks in use, and which, with few exceptions, have significantly higher rollover stability than sport utility vehicles, pickup trucks, and vans.

*B. Estimate of the Costs of a Standard*

As explained above, the agency's analyses predicted a saving of 63 lives for a minimum tilt table angle of 46.4 degrees. This level would necessitate the modification of an estimated 87 percent of present compact sport utility vehicles and virtually all present standard vans. A minimum tilt table angle of 45 degrees, which is higher than the tilt table angle of 69 percent of present compact sport utility vehicles, could save 23 lives. Similarly, a minimum critical sliding velocity standard of 16.73 kph would affect 89 percent of present compact sport utility vehicles, 38 percent of standard sport utility vehicles, and 38 percent of compact pickups, while saving 68 lives. A critical sliding velocity minimum standard of 15.91 kph would affect 71 percent of compact sport utility vehicles and 31 percent of compact pickups, while saving 34 lives.

Unfortunately, inexpensive vehicle changes, such as offset wheels or modified tire and rim width combinations, cannot be counted on to improve stability without producing handling or steering problems. An increase in track width, derived from frame or suspension alterations, or a decrease in center of gravity height are the only methods of improving stability without potential safety liabilities. Such changes would require large initial costs related to the design and development of major vehicle components, if not the entire vehicle.

These costs do not take into account the cost of the tests necessary to determine the tilt table angle or critical sliding velocity. Because these costs will also be associated with the proposed consumer information regulation, the testing costs are discussed later in this notice.

Some of the changes necessary to comply with a minimum standard may also be incompatible with some of the vehicle characteristics many consumers seek in vehicles such as sport utility vehicles, vans, motor homes, and campers. For example, in the case of sport utility vehicles, the capability to operate in off-road conditions may require both high ground clearance (necessitating a relatively high center of gravity) and narrow width to maneuver in wooded or rocky areas (necessitating a relatively narrow track width). Section 103(f)(3) of the National Traffic and Motor Vehicle Safety Act provides that a Federal motor vehicle safety standard must be reasonable and appropriate for each vehicle type to which it applies, and therefore NHTSA could not mandate a stability requirement incompatible with certain types of vehicles. In addition, the manufacturers of many of these types of vehicles would be considered small businesses, and a standard could raise concerns under the Regulatory Flexibility Act.

Another possible cost of a minimum rollover standard is decreased fuel economy. Compact sport utility vehicles have become popular, in part, because the original sport utility vehicles, which were larger, heavier, and more stable against rollover, were also more difficult to park and maneuver and had very poor fuel mileage. The compact sport utility vehicles with higher stability tend to be the larger vehicles in the class, or open vehicles with less mass in the top. A stability standard would be expected to cause a growth in size and weight of compact sport utility vehicles and a reduction in fuel mileage.

*C. Conclusions*

Based on these estimates of the benefits and costs of a minimum stability standard, NHTSA believes that the benefits would not be sufficient to justify the expected costs. Therefore, as noted above, NHTSA has decided to defer any further action on this subject until information becomes available demonstrating the cost effectiveness of such a rule. The agency may reinitiate such a rulemaking upon receipt of such information. This termination of rulemaking on vehicle stability fulfills the statutory mandate of Section 2502(b)(2)(B)(i).

While the agency is terminating rulemaking on a vehicle stability standard, NHTSA believes that the correlation between stability and rollover risk is significant enough to justify proposing a consumer information regulation to relieve the possibility of uninformed risk. The agency's decision to propose such a regulation is explained below.

## VII. Proposed Consumer Information Regulation

*A. Rationale*

NHTSA is proposing a new consumer information regulation requiring manufacturers to report the stability metric of cars and light trucks to enable consumers to make more informed choices concerning the trade-offs of vehicle attributes and rollover stability. NHTSA believes that a consumer information regulation would inform drivers of general differences in stability between light trucks and cars, and among vehicles in those classes so that consumers can make an informed choice concerning relative rollover risk. This regulation would inform drivers who still chose a less stable vehicle that they may wish to drive more cautiously in certain circumstances and that the higher risk of driving low stability vehicles can be greatly reduced by using safety belts. In addition, NHTSA believes that a consumer information regulation would motivate manufacturers to give more priority to rollover stability in the design of new vehicles. NHTSA believes these goals

can be accomplished with a minimum burden on industry and consumers.

NHTSA believes that consumer and manufacturer behavior can be affected through the provision of consumer information. The agency's experience with the New Car Assessment Program (NCAP) demonstrates the power of consumer information. Several manufacturers have informed the agency that they have internal goals of performing well in these 35 mph frontal crash tests, even though there is no regulatory requirement to do so. The lowering of the injury scores over time for all manufacturers, as reported in "Report on the Historical Performance of Different Auto Manufacturers in the New Car Assessment Program Tests", NHTSA, August 1993, can also be attributed partially to NCAP. The attention of the media to the program and the more than 20,000 calls annually to NHTSA's Hotline, the most for any NHTSA consumer information activity, speak to the consumer's interest in relevant consumer safety information. As to whether consumers want information on rollover, recent agency focus groups indicate they would ("Focus Groups on Traffic Safety Issues: Public Response to NCAP," S.W. Morris & Company, Inc., August 1993, which can be found in Docket No. 79–17, Notice 01). The consensus of the focus groups was that the agency's consumer safety information activities should be expanded to include additional kinds of crashes, including rollover. Consumers also desired point of sale information, which would be satisfied with the proposed vehicle sticker requirement.

NHTSA does not agree with those manufacturers who believe that labeling vehicles with stability information will mislead consumers or that consumers would consider the metric an absolute measure of the likelihood of rollover, regardless of driver behavior or roadway conditions. It has never been shown that improvements in safety or availability of information regarding safety increase risk-taking. In addition, the proposed label not only contains the stability information, it contains the statements: "All vehicles roll over! Always wear seat belts! In a rollover crash, an *unbelted* person is 6 to 9 times more likely to die than a person wearing a seat belt." These statements emphasize to the consumer that a vehicle with a higher stability rating can still roll over.

NHTSA is considering two possible options for specifying the stability metric. Under option one, NHTSA would select one of two metrics, critical sliding velocity or tilt table angle, and require the metric to be stated for each vehicle. NHTSA requests comments on which metric is preferable if NHTSA selects only one metric. (Note: The proposed regulatory text in this notice illustrates this option first for critical sliding velocity, and then for tilt table angle.) Under option two, NHTSA would not require a metric to be stated. Instead, the agency would require vehicles to be labeled with a statement concerning the rollover stability (e.g., one, two, or three stars) based on vehicle performance when tested for one or both of the metrics.

*B. Proposed Label*

NHTSA is proposing to require three types of information on the label and in owner's manuals. First, manufacturers would be required to include the stability metric for that vehicle. This information would either be the same as that reported by the manufacturer to NHTSA (for option one) or the "rating" provided by NHTSA (for option two). This metric would be required to be reported "accurate to the nearest kilometer per hour" for critical sliding velocity and "accurate to the nearest degree" for tilt table angle. As explained in the discussion of the two metrics in this notice, NHTSA believes that the test procedure for both metrics produces results repeatable to this degree of accuracy. Manufacturers would be allowed to choose which models and configurations could be grouped together, because they have the same metric, for the purpose of reporting metrics. However, for each metric reported by a manufacturer, the manufacturer would have to fully describe the vehicles to which the metric applies.

Second, the label would be required to contain the metric or rating ranges provided by NHTSA for both passenger cars and light trucks. The purpose of this requirement is to emphasize to consumers that there are significant differences between the stability of the average passenger car and that of the average truck-based vehicle. This information would allow consumers to make an informed choice in purchasing a passenger car or a truck-based vehicle and to compare a vehicle they are considering to other vehicles in its class.

Third, NHTSA is proposing to require a warning to inform consumers that all vehicles can, and do, roll over and that the best protection against injury or fatality, should a rollover occur, is wearing seat belts.

*C. Stability Metrics*

As noted above, NHTSA's analyses indicate that there are two metrics, critical sliding velocity and tilt table angle, which correlate well with rollover accident data. Either of these metrics could be used in a stability labeling regulation. Each has its advantages and disadvantages.

Critical sliding velocity, a dynamic metric, includes the influence of roll moment of inertia as well as the various static factors included by the static metrics such as tilt table angle. The advantage of critical sliding velocity is that it more consistently predicts rollover risk for light trucks. The disadvantage is that calculation of critical sliding velocity requires knowledge of the vehicle's center of gravity height and roll mass moment of inertia. These two parameters are difficult to measure on complete vehicles and require specialized equipment to obtain accurate results. However, these parameters can be measured on vehicle components and manufacturers of complete vehicles could calculate center of gravity height and roll mass moment of inertia of complete vehicles from data they have on component parameters. However, the agency is unsure whether final stage manufacturers and alterers of specialty vehicles are provided enough information from incomplete vehicle manufacturers to do this.

Tilt table angle, a static metric, is simple and inexpensive to measure. The nature of the test is easy for the consumer to understand. The disadvantage of this metric stems from the statistical relationship between tilt table angle and accident data. The correlation between tilt table angle and accident data breaks down if passenger cars are analyzed separately from light trucks. Further, statistical models containing tilt table angle data consistently overestimate the rollover risk for standard vans.

1. Critical Sliding Velocity

Critical sliding velocity, in kilometers per hour, is determined from the equation:

$$CSV = \sqrt{\frac{2gI_{oxx}}{Mh_{cg}^2}\left(\sqrt{\frac{TW^2}{4}+h_{cg}^2}-h_{cg}\right)}$$

where,

$$I_{oxx} = I_{xx} + M\left(\frac{TW^2}{4}+h_{cg}^2\right)$$

and

$I_{xx}$ = roll mass moment of inertia of the vehicle, in kilogram-kilometers$^2$

g = gravitational constant, in kilometers/hour$^2$

M = mass of the vehicle, loaded, in kilograms

$h_{cg}$ = center of gravity height of the vehicle, in kilometers
TW = the average of the front and rear track width of the vehicle, in kilometers.

Calculation of critical sliding velocity requires knowledge of the vehicle's mass, track width, center of gravity height, and roll moment of inertia. NHTSA agrees with commenters that the center of gravity height and roll moment of inertia are complicated measurements. To address comments on the repeatability of center of gravity height measurement, NHTSA reviewed two reports.

The study "Center of Gravity Height: A Round-Robin Measurement Program," sponsored by the Motor Vehicle Manufacturers Association and conducted by the University of Michigan Transportation Research Institute (UMTRI–91–4) compared the test facilities, procedures, and results of center of gravity height measurements at four laboratories. Each of the four laboratories used different test equipment and procedures. The study concluded that different measurement procedures can produce significantly different results. However, the study also concluded that for each laboratory and test procedure, repeatability was very good.

Another study, "Vehicle Inertial Parameters—Measured Values and Approximations," by Garrott *et al.* (Society of Automotive Engineers #881767) shows the coefficient of variation of center of gravity height at the Vehicle Research and Test Center (VRTC) facility to be 0.8 percent. The measurements used in the analyses of the relationship of critical sliding velocity and single vehicle rollover accidents came from the VRTC facility.

Based on these studies, NHTSA believes that measurements of center of gravity height and roll moment of inertia are repeatable within an individual laboratory using a specified procedure. NHTSA also believes that these measurements would be repeatable among different laboratories if all were using the same test procedure. The agency has data on a group of six make/models of light trucks and one make/model of car for which tests were run on identical vehicles, or repeated tests were run on the same vehicle. The results for all of these tests show the repeatability of critical sliding velocity to be well within the required accuracy of one kilometer per hour. Therefore, NHTSA tentatively concludes that the test procedure proposed in this notice would produce repeatable results. The proposed regulatory text does not include language for either the test equipment or the test procedure. The test equipment to be used in the procedure is VTRC's Inertial Parameter Measuring Device (IPMD). The equipment is described in United States Patent No. 5,177,998. VRTC is in the process of refining the test procedure for use with the IPMD, which is described in the report, "Vehicle Inertial Parameters—Measured Values and Approximations," by Garrott *et al.* of NHTSA's VRTC. Copies of both the patent and the report have been placed in Docket No. 91–68, Notice 03.

2. Tilt Table Angle

Some commenters to the ANPRM stated that the tilt table procedure is not standard practice and its repeatability is not known. Other commenters stated that the procedure was repeatable.

NHTSA examined two studies which concluded that the tilt table test is a simple, repeatable method of estimating the static roll stability of a vehicle. "Sensitivity Analysis of the Tilt Table Test Methodology" is a study sponsored by the Motor Vehicle Manufacturers Association and conducted by the University of Michigan Transportation Research Institute (UMTRI–91–48 December 1991). UMTRI found the tilt table test to be repeatable in their laboratory and found nothing to prevent site-to-site reproducibility. The other study is a NHTSA study which found the following parameters to be critical to achieving an accurate tilt table angle: slow, steady lift rate, minimal platform deflection, platform angle measurement accurate to 0.1 degree, and accuracy of measurement of the point at which the last tire leaves the table (DOT HS 807 747 May 1991).

Based on these studies, NHTSA believes that the tilt table test would result in repeatable measurements if conducted under specified conditions. The agency's results for either tests on identical vehicles or multiple tests on the same vehicle show the repeatability of tilt table angle to be within the required accuracy of one degree. To ensure repeatability, NHTSA has included specific test conditions in the tilt table angle test procedure.

*D. Timing of Information Provided by the Manufacturers and NHTSA*

By each January 1st, each manufacturer would be required to report to NHTSA the stability metric for each vehicle to be manufactured on or after the next September 1 and on or before the first August 31 following that September 1st. Thus, the information for "1997 model year" vehicles (vehicles manufactured between September 1, 1996 and August 31, 1997) would have to be reported by January 1, 1996. NHTSA recognizes that not all manufacturers change to production of a new model year on the same date. If a manufacturer changes production on a date after September 1, and the difference between model years affects the stability metric, the manufacturer would have to report a metric for two "vehicles" for a single make/model. NHTSA requests comments on these proposed dates. NHTSA would consider changing the beginning and ending date of the annual production period specified in this regulation if there was a different date that coincides with a majority of manufacturers' "model year."

If option one, which is a quantitative measure based on vehicle metric calculations, were chosen for a final rule, NHTSA would use the information provided by the manufacturers to supply manufacturers with ranges for all passenger cars and light trucks for the upcoming model year by April 1 of that year (i.e., in the above example, NHTSA would provide manufacturers ranges for 1997 model year vehicles by April 1, 1996.) If option two were chosen, NHTSA would use the information provided to provide manufacturers with the "rating" which must be labeled on the vehicle. Since there is a possibility that this information could not be provided by April 1, the agency requests comments on how much leadtime manufacturers would need to place the information on labels and in owner's manuals on all vehicles manufactured on or after September 1.

NHTSA is proposing to make this new regulation effective on January 1, 1996, based on the presumption that this would give manufacturers at least one year to complete testing necessary to report the tilt table angle and/or critical sliding velocity for all vehicles following publication of a final rule.

*E. Benefits*

As stated previously, NHTSA anticipates that this consumer information regulation will result in a more informed public which, through purchasing and/or driving decisions, could improve motor vehicle safety. Similarly, consumer purchasing behavior could affect manufacturers' design and/or marketing of vehicles. The agency is unable to quantify at this time the benefits of this rulemaking. A more detailed discussion of the possible benefits of this rulemaking can be found in the Preliminary Regulatory Evaluation.

*F. Costs*

The costs associated with the proposed consumer information regulation would arise from three different activities: generating the stability metric for the label, printing the labels, and affixing labels to the vehicles. This rule would not require manufacturers to make vehicle changes. While such modifications are desirable, they are not mandated, and if they occurred, would be the indirect result of market forces and not a direct result of this rulemaking.

As explained in detail in the Preliminary Regulatory Evaluation, NHTSA estimates that the total testing and labeling costs of a regulation based on critical sliding velocity would range from $4.71 to $6.35 million and the total cost of a regulation based on tilt table angle would range from $3.93 to $5.57 million.

**VIII. Final Stage Manufacturers and Alterers**

NHTSA requests comments on how final stage manufacturers and alterers would comply with the proposed consumer information regulation. Would final stage manufacturers and alterers have sufficient information on upcoming model year vehicles to report the tilt table angle and/or critical sliding velocity of the vehicles they will be producing by January 1 as required? How much information can incomplete vehicle manufacturers pass on to final stage manufacturers to assist them in predicting the tilt table angle or critical sliding velocity of the final vehicle, and when?

NHTSA also asks for comment on how many vehicles in this category would have a GVWR of 4,536 kilograms or less.

Given that many of these vehicles are manufactured for special uses, NHTSA requests comments on whether certain types of vehicles (e.g., walk-in van-type vehicles, campers, and motor homes) should be excluded from the consumer information requirement. Would consumer choice for these special-use vehicles be affected by the information provided by this proposed regulation?

**IX. Rulemaking Analyses and Notices**

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has examined the impact of this rulemaking action and determined that it is "significant" within the meaning of E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was reviewed under E.O. 12866. The agency's detailed analysis of the economic effects can be found in the Preliminary Regulatory Evaluation available in the docket for this rulemaking. The agency estimates that the proposed regulation would cost $3.93 to $6.35 million annually.

*B. Regulatory Flexibility Act*

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not expect any significant economic impacts from this proposed rule. While the agency has asked questions regarding the availability of data to certain manufacturers who could be small businesses (final stage manufacturers and alterers), NHTSA believes that these manufacturers will be able to obtain sufficient information on the vehicles they complete or alter that this proposed regulation will not impose a significantly different burden on these manufacturers.

*C. Paperwork Reduction Act*

The reporting requirements associated with this proposed rule will be submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. *Administration:* National Highway Traffic Safety Administration; *Title:* Vehicle Rollover Stability Consumer Information Regulation; *Need for Information:* To determine vehicle metric ranges for each model year; *Proposed Use of Information:* Metric ranges will be provided to manufacturers for inclusion on vehicle label; *Frequency:* Annual; *Burden Estimate:* 192 hours; *Respondents:* 24; *Form(s):* None; *Average Burden Hours for Respondent:* 8.

*D. National Environmental Policy Act*

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

*E. Executive Order 12612 (Federalism)*

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

*F. Civil Justice Reform*

This proposed rule would not have any retroactive effect. There is no express statutory intent to preempt any State law. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**X. Effective Date of Final Rule**

If adopted, the proposed amendments would become effective on January 1, 1996.

**XI. Submission of Comments**

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket

supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 575**

Consumer protection, Incorporation by reference, Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 575 be amended as follows:

## PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for part 575 of title 49 would continue to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1407, 1421, and 1423; delegation of authority at 49 CFR 1.50.

2. Part 575 would be amended by adding a new § 575.102 to read as follows:

### § 575.102 Vehicle Rollover Stability.

(a) *Purpose and Scope.* This section requires motor vehicle manufacturers to provide information on the resistance of vehicles to rollover to aid consumers in making an informed choice in the purchase of new motor vehicles.

(b) *Application.* This section applies to passenger cars, and to multipurpose passenger vehicles and trucks with a GVWR of 4,536 kilograms or less, and to manufacturers and dealers of such vehicles.

*Alternative One*

(c) *Definition.—Nearest kilometer per hour* means the next lower whole kilometer per hour, in the case of a calculated critical sliding velocity value (expressed in kilometers per hour) that falls above a whole number by 0.00 to 0.49 kilometers per hour, and the next higher whole kilometer per hour, in the case of a calculated critical sliding velocity value (expressed in kilometers per hour) that falls above a whole number by 0.50 to 0.99 kilometers per hour.

*Critical Sliding Velocity (CSV)* for a vehicle is the value determined, in kilometers per hour, from the equation:

$$CSV = \sqrt{\frac{2gI_{oxx}}{Mh_{cg}^2}\left(\sqrt{\frac{TW^2}{4}+h_{cg}^2}-h_{cg}\right)}$$

where,

$$I_{oxx} = I_{xx} + M\left(\frac{TW^2}{4}+h_{cg}^2\right)$$

and

$I_{xx}$=roll mass moment of inertia of the vehicle, in kilogram-kilometers$^2$

g=gravitational constant, in kilometers/hour$^2$

M=mass of the vehicle, loaded, in kilograms

$h_{cg}$=center of gravity height of the vehicle, in kilometers

TW=the average of the front and rear track width of the vehicle, in kilometers.

*Production year* means the period from September 1 of a calendar year to August 31 of the next calendar year, inclusive.

*Vehicle* means a group of vehicles within a make, model, or car division which have a degree of commonality in construction (e.g., body, chassis). It does not consider any level of decor, opulence, or other characteristics that do not affect CSV.

(d) *Reporting Requirements*—(1) *Reporting.* On or before January 1 of each calendar year, beginning with the 1996 calendar year, each manufacturer shall report to the Administrator a CSV for each vehicle to be manufactured in the production year beginning on September 1 of that calendar year. The CSV shall be accurate to the nearest kilometer per hour. In reporting a CSV, the manufacturer shall list the vehicle(s) to which it applies.

(2) *Information.* On or before April 1 of each calendar year, beginning with the 1996 calendar year, the Administrator, based on the information provided by all manufacturers under paragraph (d)(1) of this section, provides manufacturers with the passenger car and multipurpose passenger vehicle/truck CSV ranges to appear on the vehicle label and in the owner's manual under paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(e) *Label*—(1) *Attachment and Maintenance of Label.* (i) Each vehicle manufactured on or after September 1, 1996 shall have affixed to it a vehicle rollover stability label as described in paragraph (e)(3) of this section. Each manufacturer shall affix or cause to be affixed the labels required by this paragraph at the final assembly point.

(ii) Each dealer shall maintain or cause to be maintained, any vehicle rollover stability label on the vehicles it receives until the vehicles are sold to consumers for purposes other than resale. If a label becomes damaged so that any of the information on it is not legible, the dealer shall replace it by affixing an identical, undamaged label.

(iii) Each vehicle required by paragraph (e)(1)(i) of this section to have a vehicle rollover stability label shall have in the vehicle owner's manual the same information required to be on the label under paragraphs (e)(3)(i) through (e)(3)(vii) of this section.

(2) *Location of Label.* (i) The label required by paragraph (e)(1)(i) of this section shall be affixed on a side window of the vehicle in a manner so that it can be read from outside the vehicle.

(ii) The label shall be either a separate label, a part of the price information label required by 15 U.S.C. § 1232, or a part of the fuel economy label required by 15 U.S.C. § 2006. If the rollover stability label is separate and the window is not large enough to contain both the price information label and the rollover stability label, it shall be affixed on a side window, as close as possible to the price information label.

(3) *Label Requirements.* (i) Each rollover stability label shall be rectangular, not less than 114 mm high by 178 mm wide, and shall be in the exact format shown in Figure 1. Each label shall bear the exact wording shown in Figure 1. The CSV in the circle shall be the CSV reported to the Administrator pursuant to paragraph (d)(1) of this section for the labeled vehicle and the square brackets shall be replaced by CSV range data given to the vehicle manufacturer by the Administrator pursuant to paragraph (d)(2) of this section for the production year of the labeled vehicle.

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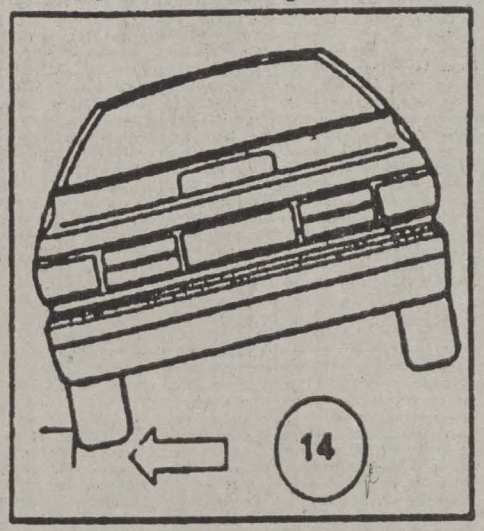
# FIGURE 1

## VEHICLE ROLLOVER STABILITY

This vehicle will roll over a curb when sliding at:




The Critical Sliding Velocity (CSV) measures a vehicle's ability to resist rolling over. For a given driver and road condition, a vehicle with a higher CSV is generally more stable.

For comparison:

Typical CSVs for passenger cars range from [ ] to [ ] mph, or [ ] to [ ] kph.

Typical CSVs for pickup trucks, vans, minivans, and sport utility vehicles range from [ ] to [ ] mph, or [ ] to [ ] kph.

**ALL VEHICLES ROLL OVER! ALWAYS WEAR SEAT BELTS!**
**In a roll over crash, an unbelted person is 6 to 9 times more likely to die than a person wearing a seat belt!**

(ii) The color of the label picture and text shall contrast with the background of the label.

(iii) All rollover stability information on the label shall be completely surrounded by a border at least 3 mm wide which contrasts with the background of the label.

(iv) The title, "Vehicle Rollover Stability," shall be centered over the label and shall be printed in bold caps no smaller than 12 points.

(v) The remainder of the label text shall be 10 points.

(vi) The illustration of the vehicle in Figure 1 shall be centered in a square not less than 50 mm on each side. The inside diameter of the circle in which the CSV appears shall be no smaller than 16 mm. The CSV figure shall be centered in the circle and no smaller than 10 mm in height.

(f) *Test Conditions*—(1) *Test Device.* Measurement of center of gravity height and roll moment of inertia are done on the Inertial Parameter Measuring Device (IPMD). The IPMD is described in United States Patent No. 5,177,998. A copy of the patent is available in Docket No. 91–68, Notice 03.

(2) *Vehicle*—(i) The test vehicle has all fluids, other than fuel, at the full level. The fuel tank and the fuel system are filled as specified in S7.1.1 and S7.1.2 of § 571.301 of this title.

(ii) The vehicle's seat is positioned according to S8.1.2 and S8.1.3 of § 571.208 of this title.

(iii) Tires used during the test are of the same size and construction recommended by the manufacturer for the vehicle. The tires have accumulated not less than 80 and not more than 1620 kilometers. Not less than 80 of those kilometers are accumulated at a speed of not less than 80 kilometers per hour. All tires are clean and dry. All tires are inflated to the vehicle manufacturer's recommended inflation pressure for maximum vehicle loading and measured when the tire is cold.

(iv) All vehicle openings (doors, windows, hood, trunk, convertible top, etc) are in the closed position.

(3) *Load.* A Hybrid III Test Dummy, as defined in Subpart E of § 572 of this title, is placed in the left front seating position, positioned according to S11 of § 571.208 of this title, and secured with the vehicle's safety belt system, whether manual or automatic. The dummy may be placed in the test vehicle before or after moving the vehicle onto the test device. The test vehicle carries no load other than the test dummy.

(4) *Ambient conditions.* The measurements of the center of gravity height and roll mass moment of inertia are made with both the vehicle and the test device at a temperature not less than 4 and not more than 39 degrees Celsius. Air motion around the vehicle and device is less than 6 kilometers per hour.

(g) *Test Procedures.* The test procedure for use with the IPMD is described in the report, "Vehicle Inertial Parameters—Measured Values and Approximations," by Garrott *et al.* of NHTSA's VRTC. A copy of the report is available in Docket No. 91–68, Notice 03.

*Alternative Two*

(c) *Definitions—Nearest degree* means the next lower whole degree, in the case of a measurement that falls above a whole number by 0.00 to 0.49 degrees, and the next higher whole degree, in the case of a measurement that falls above a whole number by 0.50 to 0.99.

*Production year* means the period from September 1 of a calendar year to August 31 of the next calendar year, inclusive.

*Tilt table angle (TTA)* means, with respect to a motor vehicle placed on a tilt table, the angle between the horizontal and the platform of the tilt table when the last uphill tire of the vehicle ceases contact with the platform surface.

*Vehicle* means a group of vehicles within a make, model, or car division which have a degree of commonality in construction (e.g., body, chassis). It does not consider any level of decor, opulence, or other characteristics that do not affect TTA.

(d) *Reporting Requirements*—(1) *Reporting.* On or before January 1 of each calendar year, beginning with the 1996 calendar year, each manufacturer shall report to the Administrator a TTA for each vehicle to be manufactured in the production year beginning on September 1 of that calendar year. The TTA shall be accurate to the nearest degree. In reporting a TTA, the manufacturer shall list the vehicle(s) to which it applies.

(2) *Information.* On or before April 1 of each calendar year, beginning with the 1996 calendar year, the Administrator, based on the information provided by all manufacturers under paragraph (d)(1) of this section, provides manufacturers with the passenger car and multipurpose passenger vehicle/truck TTA ranges to appear on the vehicle label and in the owner's manual under paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(e) *Label*—(1) *Attachment and Maintenance of Label.* (i) Each vehicle manufactured on or after September 1, 1996 shall have affixed to it a vehicle rollover stability label as described in paragraph (e)(3) of this section. Each manufacturer shall affix or cause to be affixed the labels required by this paragraph at the final assembly point.

(ii) Each dealer shall maintain or cause to be maintained, any vehicle rollover stability label on the vehicles it receives until the vehicles are sold to consumers for purposes other than resale. If a label becomes damaged so that any of the information on it is not legible, the dealer shall replace it by affixing an identical, undamaged label.

(iii) Each vehicle required by paragraph (e)(1)(i) of this section to have a vehicle rollover stability label shall have in the vehicle owner's manual the same information required to be on the label under paragraphs (e)(3)(i) through (e)(3)(vii) of this section.

(2) *Location of Label.* (i) The label required by paragraph (e)(1)(i) of this section shall be affixed on a side window of the vehicle in a manner so that it can be read from outside the vehicle.

(ii) The label shall be either a separate label, a part of the price information label required by 15 U.S.C. § 1232, or a part of the fuel economy label required by 15 U.S.C. § 2006. If the rollover stability label is separate and the window is not large enough to contain both the price information label and the rollover stability label, it shall be affixed on a side window, as close as possible to the price information label.

(3) *Label Requirements.* (i) Each rollover stability label shall be rectangular, not less than 114 mm high by 178 mm wide, and shall be in the exact format shown in Figure 2. Each label shall bear the exact wording shown in Figure 2. The TTA in the circle shall be the TTA reported to the Administrator pursuant to paragraph (d)(1) of this section for the labeled vehicle and the square brackets shall be replaced by TTA range data given to the vehicle manufacturer by the Administrator pursuant to paragraph (d)(2) of this section for the production year of the labeled vehicle.

(ii) The color of the label picture and text shall contrast with the background of the label.

(iii) All rollover stability information on the label shall be completely surrounded by a border at least 3 mm wide which contrasts with the background of the label.

(iv) The title, "Vehicle Rollover Stability," shall be centered over the label and shall be printed in bold caps no smaller than 12 points.

(v) The remainder of the label text shall be 10 points.

(vi) The illustration of the vehicle in Figure 2 shall be centered in a square not less than 50 mm on each side. The inside diameter of the circle in which the TTA appears shall be no smaller than 16 mm. The TTA figure shall be centered in the circle and no smaller than 10 mm in height.

(f) *Test Conditions*—(1) *Tilt table.* (i) The tilt table has a rigid platform or platforms onto which a test vehicle can be rolled.

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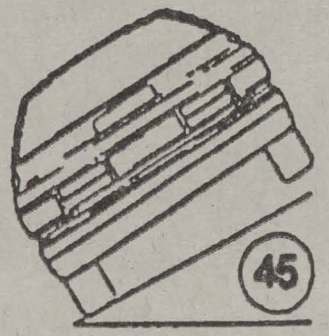
# FIGURE 2

## VEHICLE ROLLOVER STABILITY

This vehicle will fall off a tilting platform at:




The Tilt Table Angle (TTA) measures a vehicle's ability to resist rolling over. For a given driver and road condition, a vehicle with a higher TTA is generally more stable than a vehicle with a lower TTA.

For comparison:

Typical TTAs for passenger cars range from [ ] to [ ].

Typical TTAs for pickup trucks, vans, minivans, and sport utility vehicles range from [ ] to [ ].

**ALL VEHICLES ROLL OVER! ALWAYS WEAR SEAT BELTS!**
**In a roll over crash, an unbelted person is 6 to 9 times more likely to die than a person wearing a seat belt!**

(ii) The surfaces of the areas on the platform(s) where the tires of the test vehicle rest are in the same plane at all times during the test.

(iii) The surface of each tire contact area is smooth, cold rolled finished, unpainted steel. The surface of the platform(s) is dry and free of corrosion.

(iv) The table is able to rotate about a longitudinal axis not less than 50 degrees from the horizontal position.

(v) The axes of rotation are horizontal and parallel to one of the sides of the tilt table platform(s). If rotation is accomplished via hinges, all of the hinge axes of rotation are collinear.

(vi) The rate of rotation is constant and does not exceed 0.25 degree per second.

(vii) The tilt table platform has a 2.5 centimeter high trip rail for each of the vehicle's axles. Each trip rail is parallel to the axis of rotation of the table and is able to move perpendicular to the axis of rotation. The length of each trip rail is equal to or greater than the diameter of the tire on the vehicle to be tested. The trip rail surface facing the tire is parallel to the axis of rotation of the table and perpendicular to the table surface. The trip rail does not move during a test.

(viii) If the tilt table has a vehicle restraint system to prevent the test vehicle from falling off the platform during a test, the restraint system shall allow all tires on the uphill side of the test vehicle to lift at least 0.33 meter off the platform(s). The portion of the restraint system supported by the test vehicle when the uphill tires have lifted off the platform(s) shall weigh no more than 6.75 kilograms.

(ix) The tilt table instrumentation consists of means to measure the angle of the platform(s) from the horizontal and one contact switch under each of the uphill side tires to indicate when each tire has lifted off its platform surface contact area.

(2) *Vehicle.* (i) The test vehicle has all fluids, other than fuel, at the full level. The fuel tank and the fuel system are filled as specified in S7.1.1 and S7.1.2 of § 571.301 of this title.

(ii) The vehicle's seat is positioned according to S8.1.2 and S8.1.3 of § 571.208 of this title.

(iii) Tires used during the test are of the same size and construction recommended by the manufacturer for the vehicle. The tires have accumulated not less than 80 and not more than 1620 kilometers. Not less than 80 of those kilometers are accumulated at a speed of not less than 80 kilometers per hour. All tires are clean and dry. All tires are inflated to the vehicle tire manufacturer's recommended inflation pressure for maximum vehicle loading and measured when the tire is cold.

(iv) All vehicle openings (doors, windows, hood, trunk, convertible top, etc) are in the closed position.

(3) *Load.* A Hybrid III Test Dummy, as defined in Subpart E of § 572 of this title, is placed in the left front seating position, positioned according to S11 of § 571.208 of this title, and secured with the vehicle's safety belt system, whether manual or automatic. The dummy may be placed in the test vehicle before or after moving the vehicle on to the tilt table. The test vehicle carries no load other than the test dummy.

(4) *Ambient conditions.* The tilt table test is conducted with both the vehicle and the tilt table at a temperature not less than 4 and not more than 39 degrees Celsius. Air motion around the vehicle and tilt table is less than 6 kilometers per hour.

(g) *Test Procedure*—(1) *Vehicle Positioning.* (i) The test vehicle is positioned on the tilt table such that the vehicle's longitudinal axis is parallel to the axis of rotation of the table and the left side of the vehicle is positioned such that the driver's side of the vehicle will be on the low side when the table is tilted. The wheels are parallel to the vehicle's longitudinal axis.

(ii) After the vehicle has been positioned in accordance with paragraph (g)(1)(i) of this section, the engine is turned off. For automatic transmission vehicles, the transmission is in Park or, if the vehicle does not have a Park position, the transmission is placed in the Neutral position and the parking brake applied such that the vehicle does not roll during the test. For manual transmission vehicles, the transmission is in first gear and the parking brake is applied such that the vehicle does not roll during the test.

(iii) The front trip rail is moved until it is just touching the driver's side front tire of the test vehicle, then locked in place. The rear trip rail is moved until it is just touching the driver's side rear tire of the test vehicle, then locked in place.

(2) *Testing.* (i) Each tilt table test consists of six tilts. The positioning of the test vehicle on the tilt table and the contents of the vehicle are not adjusted between tilts.

(ii) For each tilt, the platform is rotated from the horizontal until all of the uphill tires on the test vehicle have lifted off the platform, as indicated by the contact switches under the uphill tires.

(iii) The platform angle at which the last tire lifts off the platform is the TTA of the vehicle for that tilt. The vehicle shall then be returned to the horizontal position at a rate not to exceed 0.25 degrees per second.

(iv) The lowest TTA of the last three tilts in the six-tilt series is the TTA for the tested vehicle.

Issued on June 23, 1994.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 94–15598 Filed 6–23–94; 11:51 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 676

[Docket No. 940683–4183; I.D. 060994B]

RIN 0648–AE79

### Limited Access Management of Federal Fisheries In and Off of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to implement Amendment 31 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 35 to the FMP for Groundfish of the Gulf of Alaska (GOA), and a regulatory amendment affecting the fishery for Pacific halibut in and off the State of Alaska (Alaska or State). This action is being proposed to implement the Modified Block Proposal, to clarify the transfer process for the Individual Fishing Quota (IFQ) program, and to prevent excessive consolidation of the Pacific halibut and sablefish fisheries off Alaska. If approved, these FMP and regulatory amendments would require the issuance of quota share (QS) blocks for QS resulting in less than 20,000 lb (9 mt) of IFQ for halibut or sablefish, based on the 1994 total allowable catch (TAC) for fixed gear in those fisheries, allow the combination of QS blocks that are less than 1,000 lb (0.5 mt) of IFQ for halibut and less than 3,000 lb (1.4 mt) of IFQ for sablefish, restrict the number of blocks that may be held by a person in any IFQ regulatory area, and clarify the transfer process for QS and IFQ. It is intended to ensure that small part-time operators and diversified operations can continue to participate profitably in the IFQ fisheries.

**DATES:** Comments must be received by August 8, 1994.

**ADDRESSES:** Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of Amendments 31 and 35, and the Environmental Assessment/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/ RIR/IRFA) for the "Sitka Block" proposed amendment, the "Full/Partial Block" proposed amendment, and the "Modified Block" proposed amendment to the IFQ management alternative for the Pacific halibut and sablefish fisheries off Alaska, may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Sitka Block proposed amendment, the Full/Partial Block proposed amendment, the Modified Block proposed amendment, and the status quo alternative for the IFQ program for fixed-gear sablefish fisheries off Alaska and for the fixed-gear Pacific halibut fisheries in and off Alaska are described in the EA/RIR/ IRFA dated December 17, 1993. Language amending the BSAI and the GOA FMPs was developed for the Modified Block Proposal, the North Pacific Fishery Management Council's (Council) chosen alternative. The amendments to the FMPs affect the sablefish fisheries in the exclusive economic zone (EEZ) off Alaska, which are managed in accordance with the BSAI and the GOA groundfish FMPs. The Council prepared both FMPs under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. General regulations that also pertain to the U.S. groundfish fisheries appear at 50 CFR part 620.

The Council does not have an FMP for halibut. The domestic fishery for halibut in and off Alaska is managed by the International Pacific Halibut Commission (IPHC), as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at Washington, DC, March 29, 1979, and the Halibut Act. The Convention and the Halibut Act authorize the Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary of Commerce (Secretary), limited-access policies for the Pacific halibut fishery in Convention waters in and off Alaska. "Convention waters" means the maritime areas off the west coast of the United States and Canada, as described in Article I of the Convention (see 16 U.S.C. 773(d)).

The Council acted under these authorities in recommending changes to the IFQ program for the halibut and sablefish fisheries. These recommended changes would be implemented by this proposed action and are intended by the Council to promote the conservation and management of sablefish and halibut resources, and to further the objectives of the Magnuson Act and the Halibut Act.

**QS Block Proposals**

Concern over the potential for excessive consolidation of fishing privileges under the IFQ program was the impetus for the QS block proposals. The Council asked its staff to analyze the first of the QS block proposals, the Sitka Block proposal, at its April 1992 meeting. The Sitka Block proposal provided that (1) initial QS for each IFQ regulatory area would be allocated in blocks, (2) QS in a block could not be separated and would have to be transferred as a block, and (3) the "maximum block size" allowed in each IFQ regulatory area would be one-half the most restrictive QS use limit for an area.

The Full/Partial Block proposal was considered at the January 1993 Council meeting. It provided that (1) initial QS for each IFQ regulatory area would be allocated in blocks, (2) QS in a block could not be separated and would have to be transferred as a block, (3) QS that represented 20,000 lb (9 mt) or more of IFQ in the implementation year would be issued as a "full block" for that IFQ regulatory area, and (4) QS that represented less than 20,000 lb (9 mt) would be issued as a "partial block" for that IFQ regulatory area.

The Modified Block proposed amendment was passed after the Council took public testimony and discussed the other two block proposals at its September 1993 meeting. The Modified Block Proposal retained most of the features of the current IFQ program, including the same ownership constraints and the same vessel size categories. The Modified Block Proposal also provided that (1) only initial allocations of QS that represented less than 20,000 lb (9 mt) of IFQ in the implementation year would be issued as a block, (2) QS that represented 20,000 lb (9 mt) or more of IFQ in the implementation year would be "unblocked" QS, and (3) QS in a block could not be separated and would have to be transferred as a block. For each species in each IFQ regulatory area, a person who did not hold any unblocked QS could hold up to two QS blocks for that area, but the sum of the two QS blocks could not exceed use limits in 50 CFR 676.22 (e) and (f). A person who held unblocked QS for an IFQ regulatory area could hold only one QS block for that area, provided that the total QS held, blocked and unblocked, for that IFQ regulatory area did not exceed use limits referenced above. The Modified Block Proposal also provided that QS blocks resulting in less than 1,000 lb (0.5 mt) of IFQ for halibut (or 3,000 lb (1.4 mt) of IFQ for sablefish) in the implementation year could be combined. The QS block resulting from this combination could not exceed 1,000 lb (0.5 mt) for halibut or 3,000 lb (1.4 mt) for sablefish. This "sweeping-up" provision was designed to allow very small QS allocations to be combined into "fishable" amounts.

All three block proposals, the Sitka Block Proposal, the Full/Partial Block Proposal, and the Modified Block Proposal, were designed to reduce the maximum potential consolidation relative to the current IFQ program. The EA/RIR/IRFA indicated that, if actual consolidation is proportional to the estimates of maximum potential consolidation, more QS holders likely would remain in the halibut and sablefish fisheries under any of the three block proposals than under the current IFQ program.

The Council adopted the Modified Block Proposal because it prevented excessive consolidation of QS by blocking any QS allocation for an IFQ regulatory area that would have represented less than 20,000 lb (9 mt) of IFQ in the implementation year (1994). Also, it did not unnecessarily interfere with the opportunities currently available under the IFQ program for larger operations, because QS allocations for an IFQ regulatory area that would have represented 20,000 lb (9 mt) or more of IFQ in 1994 would remain unblocked. The Council decided that the Modified Block Proposal would achieve the objectives of the other block

proposals (*i.e.*, protect small producers, part-time participants, and entry level participants that may tend to disappear because of excessive consolidation under the current IFQ program), with fewer restrictions on the flexibility and the economic efficiency of the IFQ program as a whole.

Whether QS is blocked or unblocked would be determined by the QS pools for each IFQ regulatory area as they exist on October 17, 1994. Using a specific date to calculate whether to block QS ensures that all persons would be treated in a similar manner, regardless of when their QS is issued. October 17, 1994, was chosen as the date to calculate QS because it was long enough after the application period (ends July 15, 1994) to allow the QS pools to achieve QS amounts reflective of their eventual range, but long enough before the 1995 fishing season to allow for transfers of QS for that fishing season.

**Transfer of QS Blocks**

Blocked and unblocked QS would be transferable subject to the approval of the Regional Director, Alaska Region, NMFS, and compliance with the transfer regulations found in 50 CFR part 676. The Modified Block Proposal creates the potential that some QS blocks would become non-transferable, because their size would exceed the QS use limits in 50 CFR 676.22 (e) and (f). This potential was addressed in the EA/RIR/IRFA dated December 17, 1993. Since there was only a slight potential of having a QS block that would be non-transferable, and only a few regulatory areas were affected, an alternative was developed to solve the issue of non-transferability, rather than totally abandoning the Modified Block Proposal.

This alternative would permit the transfer of a QS block that exceeded the QS use limits by dividing the block into two blocks. The sizes of the resulting blocks would depend on the QS use limit preventing the transfer—one block would be the maximum size allowable under the QS use limit, the other block would contain the residual QS. Dividing a block to allow its transfer when it would be otherwise non-transferable because it exceeded the QS use limit is an exception to the proposed rule (§ 676.21(d)(1)). Under any other circumstance, a QS block could not be divided.

Furthermore, this alternative does not waive any of the other use limits under the existing IFQ program or under the changes proposed to the program by this action. For example, a person may only hold two QS blocks for an IFQ regulatory area, or one QS block if any unblocked QS is held. Also, a person cannot exceed the QS use limit by transfer. These limits would prevent a person from receiving, by transfer, the two blocks created by dividing a block because its size exceeded the QS use limit. If a person held any QS for an IFQ regulatory area, blocked or unblocked, the most he/she would be able to receive by transfer would be one block. If a person did not hold any QS for an IFQ regulatory area, he/she would still be prevented from receiving both blocks, because the sum of the QS in both blocks would exceed the QS use limit for that regulatory area.

**Other Changes to the IFQ Regulatory Language**

This action proposes changes to the transfer procedure in 50 CFR part 676 to accommodate the Modified Block Proposal, and to further clarify the transfer process. First, a definition of transfer of QS or IFQ would be included in the introductory paragraph of § 676.21. Second, § 676.21(e) would be revised and placed at § 676.21 (a), (b), and (c). Third, procedures designed specifically for transferring QS blocks would be placed in § 676.21(d). Fourth, procedures for transfers of QS or IFQ resulting from court orders, operation of law, or as part of security agreements would be clarified and placed in § 676.21(e). Fifth, transfer restrictions specific to regulatory areas would be expanded and placed in § 676.21(f). Making the transfer process easier to understand is the impetus for these proposed changes. NMFS is particularly interested in public comments regarding these changes to the existing transfer process for QS and IFQ, which was published in the **Federal Register** on November 9, 1993 (58 FR 59375).

Section 304(a)(1)(D) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the FMP amendments and regulations. At this time, the Secretary has not determined that the FMP amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary, in making final determinations about the FMP amendments and in promulgating final rules under both the Magnuson and Halibut Acts, will take into account the data, views, and comments received during the comment period.

**Classification**

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. The analysis in the IRFA indicates that by reducing consolidation, the Modified Block Proposal may increase the total cost of harvesting the fishery resource, thereby decreasing the net economic benefits of the IFQ program and increasing harvesting costs to small entities. The analysis also indicates that by reducing consolidation, the Modified Block Proposal may result in higher levels of harvesting employment. Higher levels of harvesting employment and the maintenance of diversity in fishing operations participating in the IFQ program are the main goals of the Modified Block Proposal. A copy of the analysis is available from the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects in 50 CFR Part 676**

Fisheries, Reporting and recordkeeping requirements.

Dated: June 22, 1994.

**Henry R. Beasley,**

*Acting Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 676 is proposed to be amended as follows:

## PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

**§ 676.16 [Amended]**

2. Section 676.16 is amended by removing and reserving paragraphs (i) and (n).

3. Section 676.20 is amended by revising paragraph (a) and the first sentence of the introductory text of paragraph (f) to read as follows:

**§ 676.20 Individual allocations.**

* * * * *

(a) *Initial allocation of quota share.* The Regional Director shall initially assign to qualified persons, on or after October 18, 1994, halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories. QS will be assigned as a block in the appropriate IFQ regulatory area and vessel category if that QS would have resulted in an allocation of less than 20,000 lb (9 mt) of IFQ for halibut or sablefish based on:

(1) The 1994 TAC for fixed gear in those fisheries for specific IFQ regulatory areas, and

(2) The QS pools of those fisheries for specific IFQ regulatory areas as of October 17, 1994.

* * * * *

(f) * * * The Regional Director shall assign halibut or sablefish IFQs to each person holding unrestricted QS for halibut or sablefish, respectively, up to the limits prescribed at § 676.22 (e) and (f). * * *

* * * * *

4. Section 676.21 is revised to read as follows:

**§ 676.21 Transfer of QS and IFQ.**

Transfer of QS or IFQ means any transaction requiring QS, or the use thereof in the form of IFQ, to pass from one person to another, permanently or for a fixed period of time, except that transactions requiring IFQ cards to be issued in the name of a vessel master employed by an individual or a corporation are not transfers of QS or IFQ.

(a) *Transfer procedure.* A person who receives QS by transfer may not use IFQ resulting from that QS for harvesting halibut or sablefish with fixed gear until an Application for Transfer of QS/IFQ (Application for Transfer) is approved by the Regional Director. The Regional Director shall provide an Application for Transfer form to any person on request. Persons who submit an Application for Transfer to the Regional Director for approval will receive notice of the Regional Director's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another communication mode is requested on the Application for Transfer. QS or IFQ accounts affected by an Application for Transfer approved by the Regional Director will change on the date of approval. Any necessary IFQ permits will be sent with the notice of the Regional Director's decision.

(b) *Application for Transfer approval criteria.* Except as provided in paragraph (e) of this section, an Application for Transfer will not be approved until the Regional Director has determined that:

(1) The person applying for transfer received the QS or IFQ to be transferred:

(i) By initial assignment by the Regional Director as provided in § 676.20(a); or

(ii) By approved transfer;

(2) The person applying to receive the QS or IFQ meets the requirements of eligibility in paragraph (c) of this section;

(3) The person applying for transfer and the person applying to receive the QS or IFQ have their notarized signatures on the Application for Transfer;

(4) There are no fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person;

(5) The person applying to receive the QS or IFQ currently exists;

(6) The transfer would not cause the person applying to receive the QS or IFQ to exceed the use limits in § 676.22 (e) or (f);

(7) The transfer would not violate the provisions of paragraph (f) of this section; and

(8) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Director.

(c) *Eligibility to receive QS or IFQ by transfer.* All persons applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility), containing accurate information, to the Regional Director. The Regional Director will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Director. The Regional Director shall provide an Application for Eligibility form to any person on request.

(1) A person must indicate on the Application for Eligibility whether the eligibility sought is as:

(i) An individual; or

(ii) A corporation, partnership, or other entity.

(2) A person may submit the Application for Eligibility with the Application for Transfer or file the Application for Eligibility prior to submitting the Application for Transfer. If a person, as described in paragraph (c)(1)(ii) of this section, files the Application for Eligibility prior to submitting the Application for Transfer, and that person's status subsequently changes, as described in § 676.22, that person must resubmit an Application for Eligibility before submitting, or with, the Application for Transfer.

(3) The Regional Director's approval of an Application for Eligibility will be mailed to the person by certified mail.

(4) The Regional Director will notify the applicant if an Application for Eligibility is disapproved. This notification of disapproval will include:

(i) The disapproved Application for Eligibility; and

(ii) An explanation why the Application for Eligibility was not approved.

(5) Reasons for disapproval of an Application for Eligibility may include, but are not limited to:

(i) Fewer than 150 days of experience working as an IFQ crew member;

(ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of "person" at § 676.11;

(iii) An incomplete Application for Eligibility; or

(iv) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations.

(d) *Transfers of QS blocks.* (1) A QS block must be transferred as an undivided whole, unless the size of the QS block exceeds the use limits specified at § 676.22. If the QS block to be transferred exceeds the use limits specified at § 676.22, the Regional Director will divide the block into two blocks, one block containing the maximum amount of QS allowable under the QS use limits and the other block containing the residual QS.

(2) QS blocks representing less than 1,000 lb (0.5 mt) of IFQ for halibut or less than 3,000 lb (1.9 mt) for sablefish, based on the factors listed in § 676.20(a), for the same IFQ regulatory area and vessel category, may be consolidated into larger QS blocks, provided that the consolidated QS blocks do not represent greater than 1,000 lb (0.5 mt) of IFQ for halibut or greater than 3,000 lb (1.4 mt) of IFQ for sablefish based on the factors listed in § 676.20(a). A consolidated QS block cannot be divided and is considered a single block for purposes of use and transferability.

(e) *Transfer of QS or IFQ with restrictions.* If QS or IFQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS or IFQ by transfer does not meet all of the eligibility requirements of this section, the Regional Director will approve the Application for Transfer with restrictions. The Regional Director will not assign IFQ resulting from the restricted QS to any person. IFQ with restrictions may not be used for harvesting halibut or sablefish with fixed gear. The QS or IFQ will remain restricted until:

(1) The person who received the QS or IFQ with restrictions meets the eligibility requirements of this section and the Regional Director approves an Application for Eligibility for that person; or

(2) The Regional Director approves the Application for Transfer from the person who received the QS or IFQ with restrictions to a person who meets the requirements of this section.

(f) *Transfer restrictions.* (1) Except as provided in paragraph (e) or paragraph (f)(2)) of this section, only persons who are IFQ crew members, or that were initially assigned catcher vessel QS, and meet the other requirements in this section may receive catcher vessel QS.

(2) Except as provided in paragraph (f)(3) of this section, only persons who are IFQ crew members may receive catcher vessel QS in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140 °W. long. for sablefish.

(3) Catcher vessel QS initially assigned to an individual may be transferred to a corporation that is solely owned by the same individual. Such transfers of catcher vessel QS in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140 °W. long. for sablefish will be governed by the use provisions of § 676.22(i); the use provisions pertaining to corporations at § 676.22(j) shall not apply.

(4) The Regional Director will not approve an Application for Transfer of catcher vessel QS subject to a lease or any other condition of repossession or resale by the person transferring QS, except as provided in paragraph (g) of this section, or by court order, operation of law, or as part of a security agreement. The Regional Director may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(g) *Leasing QS (applicable until January 2, 1998).* A person may not use IFQ resulting from a QS lease for harvesting halibut or sablefish until an Application for Transfer complying with the requirements of paragraph (b) of this section and the lease agreement are approved by the Regional Director. A person may lease no more than 10 percent of that person's total catcher vessel QS for any IFQ species in any IFQ regulatory area to one or more persons for any fishing year. After approving the Application for Transfer, the Regional Director shall change any IFQ accounts affected by an approved QS lease and issue all necessary IFQ permits. QS leases must comply with all transfer requirements specified in this section. All leases will expire on December 31 of the calendar year for which they are approved.

5. Section 676.22 is amended by revising paragraph (g) to read as follows:

**§ 676.22 Limitations on the use of QS and IFQ.**

* * * * *

(g) *Limitations on QS blocks.* No person, individually or collectively, may hold more than two blocks for each species in any IFQ regulatory area, except that if that person, individually or collectively, holds unblocked QS for a species in an IFQ regulatory area, such person may only hold one QS block for that species in that IFQ regulatory area. For purposes of this section, holding, or to hold, blocks of QS means being registered by NMFS as the person who received QS by initial assignment or approved transfer.

* * * * *

[FR Doc. 94–15553 Filed 6–22–94; 5:01 pm]
BILLING CODE 3510–22–W

# Notices

Federal Register
Vol. 59, No. 123
Tuesday, June 28, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 94–004–2]

### Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Notice of Renewal

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of renewal.

**SUMMARY:** We are giving notice that the Secretary of Agriculture has renewed the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Williams, Senior Staff Veterinarian, Emergency Programs Staff, Veterinary Services, APHIS, USDA, room 745, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8092.

**SUPPLEMENTARY INFORMATION:** The purpose of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) is to advise the Secretary of Agriculture regarding program operations and measures to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry diseases, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

Done in Washington, DC, this 20th day of May 1994.

**Wardell C. Townsend, Jr.,**

*Assistant Secretary for Administration.*

[FR Doc. 94–15642 Filed 6–27–94; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 94–014–2]

### National Animal Damage Control Advisory Committee; Notice of Renewal

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of Renewal.

**SUMMARY:** We are giving notice that the Secretary of Agriculture has renewed the National Animal Damage Control Advisory Committee (Committee) for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Clay, Director, Operational Support Staff, Animal Damage Control, APHIS, USDA, room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8281.

**SUPPLEMENTARY INFORMATION:** The purpose of the National Animal Damage Control Advisory Committee (Committee) is to advise the Secretary of Agriculture regarding policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

Done in Washington, DC, this 20th day of May 1994.

**Wardell C. Townsend, Jr.,**

*Assistant Secretary for Administration.*

[FR Doc. 94–15641 Filed 6–27–94; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 92–181–4]

### Gull Hazard Reduction Program, John F. Kennedy Intentional Airport: Record of Decision Based on the Final Environmental Impact Statement

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public of the Animal and Plant Heath Inspection Service's record of decision for the Gull Hazard Reduction Program at John F. Kennedy International Airport. The decision is based on the final environmental impact statement for the programs.

**ADDRESSES:** Copies of the final environmental impact statement on which the record of decision is based are available for review between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, at the following locations:

APHIS Reading Room, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC; and,

USDA—APHIS—ADC, State Director, 140–C Locust Grove Road, Pittstown, NJ.

Interested persons may obtain a copy of the final environmental impact statement by writing to Ms. Janet Bucknall at the address listed below under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet Bucknall, State Director, Animal Damage Control, APHIS, USDA, RD#1, 140–C Locust Grove Road, Pittstown, NJ 08867–9529, (908) 735–5654.

**SUPPLEMENTARY INFORMATION:** On February 11, 1994, the Animal and Plant Health Inspection Service (APHIS), published in the **Federal Register** (59 FR 6612, Docket No. 92–181–3) a notice advising the public that APHIS, in cooperation with the National Park Service and the Fish and Wildlife Service (USFWS), U.S. Department of Interior, and the New York State Department of Environmental Conservation (DEC), has prepared a draft environmental impact statement (EIS) for the Gull Hazard Reduction Program at John F. Kennedy International Airport (JFKIA). All comments received on the draft EIS were considered in the final EIS.

On May 6, 1994, the Environmental Protection Agency (EPA) published in the **Federal Register** (59 FR 13714–23715, Docket No. ER–FRL–4710–9) a notice advising the public of the availability of a final EIS for the Gull Hazard Reduction Program at JFKIA. The final EIS describes and analyzes all reasonable alternatives, including the preferred alternative for an integrated management program (IMP), for gull hazard control at JFIA.

Under section 1506.10(d) of the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), a 16-day waiver has been granted by EPA of the 30-day waiting period for recording the decision on the program.

This notice contains the agency's record of decision, based on the final EIS, for the Gull Hazard Reduction Program and JFKIA. This record of decision has been prepared in accordance with: (1) NEPA (42 U.S.C. 4321 *et seq.*), (2) Regulations of the CEQ for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 51272–51274, August 31, 1979).

Done in Washington, DC, this 22nd day of June 1994.

**Alex B. Thiermann,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

The agency record of decision is set forth below.

**Record of Decision for United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Animal Damage Control (ADC), Gull Hazard Reduction Program, John F. Kennedy International Airport; Final Environmental Impact Statement, Introduction**

This decision concludes a complex evaluation process that explores alternatives which reduce or eliminate the hazard to aviation and human safety at John F. Kennedy International Airport (JFKIA) posed by the presence and activities of gulls, especially laughing gulls. The EIS identifies the severity and nature of the hazards created by gull-aircraft collisions at JFKIA. Until approximately the mid-1980s the hazards posed by gulls could, for the most part, be effectively controlled by conventional bird management activities on JFKIA: insect, water, vegetation, and sanitation management programs, and conduct of the Port Authority's bird Control Unit (BCU). Throughout the late 1980s, the hazard to aviation grew as the presence of laughing gulls increased substantially concurrent with the growth of the laughing gull nesting colony in Jamaica Bay. In 1991, an experimental on-airport shooting program was initiated to augment the conventional control methods already in place at JFKIA. The shooting program was also conducted in 1992 and 1993.

Although an annual shooting program is quite effective in reducing gull-aircraft strikes, especially when it is conducted in combination with on-airport non-lethal approaches, its desirability as a long-term solution may be limited due to the large number of gulls killed. Accordingly, the EIS process was commenced in 1992 for the purpose of exploring alternatives to dealing effectively with the gull hazard situation at JFKIA in a way that takes into account all interests.

The Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act (NEPA) tell the decision maker what information must be included in records of decision. Section 1505.2 of the CEQ Regulations provides that records of decision contain:

—A statement of the decision;
—The identification of all alternatives considered by the agency, including the environmentally preferable alternative(s);
—A discussion of all factors—economic, technical, and mission-related as well as considerations of national policy balanced in the decision making process and how each factor weighs in the decision; and
—An explanation of whether the decision is designed to avoid or minimize environmental harm and, if not, why not.

**Alternatives Considered**

The EIS explores a wide variety of alternative approaches, that would occur both on JFK and off JFK property, including: the No Action alternative, On-Airport Shooting, the Port Authority of New York and New Jersey's (Port Authority) On-Airport Program, and other alternatives that are either lethal or nonlethal. The Integrated Management Program (IMP) includes the following components:

1. Continued Development of JFK's On-Airport Program
2. Reduction of Off-Airport Attractants
3. On-Airport Shooting of Gulls
4. Laughing Gull Nest/Egg Destruction in Jamaica Bay
5. On-Colony Shooting of Adult Laughing Gulls
6. Display of Gull Models to Harass Gulls

A total of 29 separate alternative methods are described and analyzed. Alternatives include those that would occur on JFK, on the Gateway National Recreation Area (GNRA), and at other off-airport sites. Both lethal and nonlethal methods of gull hazard control are contained in those alternatives. Major categories of alternatives are as follows: nesting habitat modifications, discouraging use of the nesting colony site through harassment, reduction of off-airport attractants, expansion of JFKIA's on-airport bird control program, airport operational strategies, aircraft engineering, laughing gull population reduction, and on-airport gull shooting and harassment.

**Roles and Responsibilities**

Decisions regarding the selection and conduct of alternatives are complicated by the fact that the cooperating Federal and New York State agencies have very different roles and responsibilities. In the past, APHIS, the Federal lead agency, has provided services (gull hazard control) to the Port Authority upon their request. APHIS' jurisdiction (and its choice among alternatives) is limited to deciding what wildlife control activities, if any, it should conduct when requested to assist public and private entities. On-airport gull control activities would be done at the request of the Port Authority of New York and New Jersey. The on-airport gull shooting program, a component of the IMP, would require the acquisition of permits from the USFWS and the DEC. The reduction of off-airport attractants would require the approval of the entities controlling those sites. On-colony activities would require the approval of NPS. The EIS considers all feasible alternatives, and among those alternatives, indicates which are the environmentally preferable alternatives. However, ADC does not alone have the jurisdiction to select or implement any of those alternatives.

The USFWS has permitting authorities regarding the taking of Federally-protected migratory birds, and identifies conditions under which permits may be issued. The USFWS would evaluate permit applications for the following components of the IMP: on-airport shooting of gulls, on-colony shooting of adult laughing gulls, and laughing gull egg/nest destruction. The USFWS may identify conditions under which permits are issued.

The National Park Service (NPS) is responsible for managing GNRA pursuant to applicable laws, policies, and regulations. The NPS has decision-making authority regarding conduct of IMP components that would occur on NPS lands in Jamaica Bay. Those components of the IMP that would require authorizations from the NPS are: laughing gull nest/egg destruction, on-colony shooting of adult laughing gulls, and display of gull models to harass gulls.

The DEC has permitting authority for the taking of migratory birds pursuant to New York State law. The DEC has decision-making authority regarding permitting of IMP components that would include taking of gulls: on-airport shooting of gulls, laughing gulls nest/

egg destruction, and on-colony shooting of adult laughing gulls.

The United States Department of the Interior's (USDI) recent statement of policy (Section 6.4.2 of the EIS) declares that IMP components 1–3 must first be conducted and proven ineffective before the USDI would initiate any components that would be conducted on NPS property and directed at relocating the Jamaica Bay laughing gull nesting colony away from its present location. Past experience with component 1–3 activities between 1991–93 indicates that these three components are effective in reducing bird-strikes at JFKIA.

**Decision**

The circumstances identified above require that the APHIS decision be bifurcated.[1] I will treat actions that must be taken in the near term separately from those that would be taken in the longer term.

Based upon the analysis contained in the environmental impact statement, I have determined that an integrated gull hazard control program at JFKIA is clearly superior. I have decided, in the context of the relationship between ADC and the Port Authority, that when ADC personnel determine, with the concurrence of the FAA and the Port Authority, that the number of gulls entering JFKIA airspace has reached an unacceptable level, ADC will begin an on-airport gull shooting program as described in Chapter 3 of the EIS, once the requisite Federal and New York State permits are issued to ADC. ADC will work with the Port Authority among others to enhance JFKIA's on-airport bird control program, improve the functioning of the Bird Hazard Task Force (BHTF), and reduce off-airport attractants. These non-lethal components will contribute to the reduction of gull mortality over the long term, but will not be as effective in achieving that objective as would be the relocation of the Jamaica Bay laughing gull nesting colony through conduct of IMP components 4–6. ADC believes such relocation is feasible and would be in the best interest of air travelers and the laughing gull population.

*Short-Term:* I have determined that the IMP represents the best available means of addressing the expected immediate need to reduce the potential for large numbers of gull-aircraft collisions at JFKIA in 1994. When ADC personnel determine, with the concurrence of the FAA and the Port Authority, that the number of gulls entering JFKIA airspace has reached an unacceptable level, ADC will begin an on-airport gull shooting program as described in Chapter 3 of the EIS, once the requisite Federal and New York State permits are issued to ADC. Whenever possible, ADC will continue to assist the Port Authority in implementing and improving the nonlethal components of the IMP, including the conduct and enhancement of: On-airport vegetation, water, insect, and sanitation management programs, improved operational functioning of the Port Authority BCU and the BHTF, and, wherever possible, the identification and reduction of off-airport bird attractants. Conduct of these activities will minimize the number of gulls taken in the on-airport shooting program.

The overriding factor that weighed in making this decision is human safety. Other considerations, including the minimization of adverse environmental impacts have been factored into this short-term decision to the fullest extent possible. Although I would have preferred a decision that included immediate efforts to relocate the laughing gull colony, the current circumstances do not favor those alternatives. Based upon past experience, the timing and nature of the gull-aircraft strike hazard will likely dictate that management action will be immediately necessary to protect human safety; other alternatives could not be fully implemented and still address this immediate need.

*Long-Term:* APHIS ADC supports the implementation of the six components of the IMP, with the long-term objective of relocating the laughing gull colony away from its present location. For the long term, reducing the potential for gull-aircraft collisions at JFKIA should be achieved through the IMP, with emphasis on non-lethal alternatives and on those alternatives that would accomplish relocation of the Jamaica Bay laughing gull colony away from its present location. Conduct of the 6-component IMP provides a more complete opportunity to strike a balance between human safety and other public policies. The EIS adequately analyzes all alternatives, including those which APHIS and the State and Federal cooperating agencies would authorize. Although APHIS cannot authorize or pursue the alternatives that would occur on NPS property, it should be emphasized that the important factors of human safety and protection of wildlife can be achieved only through implementation of *all* components of the IMP.

The nature and extent of APHIS' role in JFKIA's Gull Hazard Reduction Program will be examined annually by APHIS ADC, which will report its findings to me and make them available to the public. The Port Authority's efforts to conduct non-lethal gull control methods and USDI's progress towards the conduct of the components that would occur on NPS property will be among the most important factors APHIS will consider. To reiterate, the environmentally preferred long term approach is the relocation of the laughing gull colony away from its present location at the end of the runway, in order to reduce the long term mortality of gulls, and so substantially reduce the potential for gull-aircraft collisions at JFKIA.

**Minimizing Environmental Harm**

The primary adverse environmental impact of the gull hazard reduction program is the mortality of gulls. The continued development and conduct of the Port Authority's on-airport program that emphasizes non-lethal bird hazard control approaches, will contribute to the reduction of gull mortality. Conduct of the three IMP components that would occur on NPS property would reduce the need to conduct on-airport shooting programs, and would reduce over the long-term the mortality rate of gulls. The Port Authority and the USDI are encouraged to conduct these activities in order to reduce gull mortality in the short and long terms.

Chapter 7 of the FEIS identifies mitigation and monitoring strategies to be conducted to minimize the adverse impacts of alternatives. All APHIS-conducted gull hazard control activities will be conducted in such a manner that minimizes adverse environmental impacts and seeks to maximize human and aircraft safety at JFK. During the course of the shooting program, APHIS ADC will monitor the situation at the airport, including mitigation strategies, and report periodically (at least bi-weekly) to me. All such reports will be available to the public.

Dated May 25, 1994.

**Lonnie King,**

*Acting Administrator, USDA, APHIS.*

April 19, 1994.

Richard E. Sanderson,

*Director, Office of Federal Activities, U.S. Environmental Protection Agency, 401 M Street, SW. (A–104), Washington, DC 20460.*

[1] Based on past experience, ADC determined that gulls are likely to create an extreme hazard to aviation before the close of the required 30-day period between issuance of the Notice of Availability of the Final Environmental Impact Statement (EIS) and the decision. Thus, ADC requested a 16-day waiver of that time period (Appendix 1) from the U.S. Environmental Protection Agency (EPA). EPA granted the waiver in a letter dated April 29, 1994 (Appendix 2).

Re: JFKIA Gull Hazard Reduction Program EIS Process

Dear Mr. Sanderson: This is to advise that anticipated public safety considerations require that we seek a reduction in the 30-day period (between notification of availability of the final environmental impact statement and issuance of records of decision) required by 40 CFR 1506.10(b) in the above-referenced matter. The 45-day comment period on the draft environmental impact statement closed on March 28, 1994. We now anticipate that the notice of availability of the final environmental impact statement will be published in the May 6th issue of the Federal Register. It appears, however, that decisions may have to be made before June 5, 1994, the earliest a decision could be issued consistent with the provisions of 40 CFR 1506.10(b)(2).

The environmental impact statement—the process for which has to date fully involved the public and included an on-site "public information meeting"—explores alternatives to reduce the gull hazard to aircraft at John F. Kennedy International Airport. During each of the past three years beginning in mid-May the potential for gull-aircraft interactions has tended to increase dramatically. We reasonably expect that the potential for gull-aircraft interactions will reach an unacceptable level before June 5, 1994. Thus, a reduction of the required 30-day period between notification of availability of the final environmental impact statement and issuance of the records of decision by the Animal and Plant Health Inspection Service, lead agency in the EIS process, and the United States Fish and Wildlife Service, a cooperating agency in the EIS process, is hereby requested.

If additional information is needed or you have questions concerning this matter, please call me at (301) 436–8565. Thank you for your consideration of this request.

Sincerely,

Carl Bausch,

*Deputy Director, Environmental Analysis and Documentation.*

April 25, 1994.

Richard E. Sanderson,

*Director, Office of Federal Activities, U.S. Environmental Protection Agency, 401 M Street, SW (A–104), Washington, DC 20460.*

Re: JFKIA Gull Hazard Reduction Program EIS Process

Dear Mr. Sanderson: This amends my letter of April 19, 1994 in the above-referenced matter for the purpose of seeking a specific waiver period. The facts and circumstances as described in my previous letter have not changed. In fairness to the public, however, a fixed date by which a decision is to be made should be provided. Accordingly, a 16-day waiver of the 30-day period prescribed in 40 CFR § 1506.10(b)—allowing a decision to be made on May 20, 1994—is hereby requested. We still anticipate that the notice of availability of the final environmental impact statement will be published in the May 6th issue of the Federal Register.

If you have questions concerning this amendment or if additional information is needed, please contact me directly. Thank you for your cooperation in this matter.

Sincerely,

Carl Bausch,

*Deputy Director, Environmental Analysis and Documentation.*

April 29, 1994.

Carl Bausch,

*Deputy Director, Environmental Analysis and Documentation, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Room 842, 6505 Belcrest Road, Hyattsville, Maryland 20782.*

Dear Mr. Bausch: I have received and reviewed your request dated April 19, 1994 and the amendment dated April 25, 1994, asking for a 16-day waiver of the review period for the Final Environmental Impact Statement (FEIS) Gull Hazard Reduction Program, John F. Kennedy International Airport, Queens County, New York. The request has been carefully reviewed pursuant to Section 1506.10(d) of the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act.

Based on my review of the request, I find reasons of compelling national policy have been substantiated. Therefore a 16-day waiver has been approved for the above mentioned FEIS.

As required by § 1506.10(d), CEQ will be notified of your request and my subsequent approval. You will be provided with a copy of the notice once it appears in the Federal Register. Should you have any questions, please contact me or have a member of your staff contact Marilyn Henderson of my office at (202) 260–5075.

Sincerely,

Richard E. Sanderson,

*Director, Office of Federal Activities.*

[FR Doc. 94–15634 Filed 6–27–94; 8:45 am]

BILLING CODE 3410–34–M

## Economic Research Service

### National Agricultural Cost of Production Standards Review Board; Meeting

The National Agricultural Cost of Production Standards review Board will meet on July 11–12, 1994, in Waugh Auditorium in the Economic Research Service Building, 1301 New York Avenue, NW., Washington, DC.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. The first session of the meeting will be 8 a.m.–12 a.m. on July 11, 1994. Subsequent sessions will be held from 1:30 p.m.–5 p.m. on July 11, and 8 a.m.–12 noon on July 12.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted before or after the meeting to Richard Long, Acting Director, ARED–ERS–USDA, room 314, 1301 New York Avenue NW., Washington, DC 20005–4888.

This meeting is authorized by 7 U.S.C. 4104, as amended. For further information, contact Jim Ryan at (202) 219–0798.

Kenneth L. Deavers,

*Acting Administrator.*

[FR Doc. 94–15545 Filed 6–27–94; 8:45 am]

BILLING CODE 3410–18–M

## Forest Service

### Newspapers Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR part 215 and 36 CFR part 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

**DATES:** Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 30, 1994. The list of newspapers will remain in effect until October 1994 when another notice will be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** K. Dale Torgerson, Regional Appeals and Litigation Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625–5279.

**SUPPLEMENTARY INFORMATION:** The administrative appeal procedures 36 CFR part 215 and 36 CFR part 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In

addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

**Regional Forester, Intermountain Region**

For decisions made by the Regional Forester affecting National Forests in Idaho:
The Idaho Statesman, Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada:
The Reno Gazette-Journal, Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming:
Casper Star-Tribune, Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah:
Standard-Examiner, Ogden, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Standard-Examiner, Ogden, Utah

**Ashley National Forest**

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt and Duchesne District Ranger decisions:
Uintah Basin Standard, Roosevelt, Utah

**Boise National Forest**

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
Mountain Home News, Mountain Home, Idaho
Boise District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decisions:
The Advocate, Cascade, Idaho
Lowman District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho

**Bridger-Teton National Forest**

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

**Caribou National Forest**

Caribou Forest Supervisor decisions:
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Malad District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Pocatello District Ranger decisions:
Idaho State Journal, Pocatello, Idaho

**Challis National Forest**

Challis Forest Supervisor decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho

**Dixie National Forest**

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

**Fishlake National Forest**

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Richfield Reaper, Beaver, Utah
Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah

**Humboldt National Forest**

Humboldt Forest Supervisor decisions:
Elko Daily Free Press, Elko, Nevada
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge and Ruby Mountain District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ely District District Ranger decisions:
Ely Daily Times, Ely, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada
Jarbidge District Ranger decisions:
Twin Falls Times News, Twin Falls, Idaho

**Manti-Lasal National Forest**

Manti-Lasal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
Mt. Pleasant Pyramid, Mt. Pleasant, Utah
Ferron District Ranger decisions:
Emergy County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

**Payette National Forest**

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

**Salmon National Forest**

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho

**Sawtooth National Forest**

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:

Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News-Twin Falls, Idaho

**Targhee National Forest**

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

**Toiyabe National Forest**

Toiyabe Forest Supervisor decisions:
Reno Gazette-Journal, Reno, Nevada
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada
Las Vegas District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada

**Uinta National Forest**

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

**Wasatch-Cache National Forest**

Wasatch-Cache Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah
Dated: June 21, 1994.

**Robert W. Hamner,**

*Acting Regional Forester.*

[FR Doc. 94–15591 Filed 6–27–94; 8:45 am]

BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will be convened at 1:00 p.m. and adjourn at 4:00 p.m. on Tuesday, July 12, 1994, at the Omni Hotel, Washington Room, 101 West Fayette Street, Baltimore, Maryland 21201. The purpose of the meeting is (1) to review a draft report of the Committee's factfinding meeting on Asian/Pacific American civil rights issues in Montgomery County and (2) to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Chester Wickwire, 410–825–8949, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC,

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit*

[FR Doc. 94–15564 Filed 6–27–94; 8:45 am]

BILLING CODE 6335-01-F

### Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Alabama Advisory Committee to the Commission will hold a meeting on Thursday, July 28, 1994, from 6:00 p.m. until 8:00 p.m. at the Hilton Hotel, 401 Williams Avenue, Huntsville, Alabama 35801. The purpose of the meeting is to discuss current civil rights concerns in the State and to plan future projects in Alabama.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 21, 1994.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit*

[FR Doc. 94–15563 Filed 6–27–94; 8:45 am]

BILLING CODE 6335-01-F

### Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Nebraska Advisory Committee to the Commission will hold a meeting on Thursday, July 21, 1994, from 6:00 p.m. until 8:00 p.m. at the Ramada Inn Hotel, 141 North 9th Street, Lincoln, Nebraska 65808. The purpose of the meeting is to discuss current civil rights concern in the State and to plan future projects in Nebraska.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 21, 1994.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit*

[FR Doc. 94–15562 Filed 6–27–94; 8:45 am]

BILLING CODE 6335-01-F

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Spectrum Planning and Policy Advisory Committee; Meeting

**AGENCY:** National Telecommunications and Information Administration.

**ACTION:** Notice of meeting, Spectrum Planning and Policy Advisory Committee (SPAC).

**SUMMARY:** In accordance with the provisions of the Federal Aviation Committee Act, 5 U.S.C. Appendix, notice is hereby given that the Spectrum Planning and Policy Advisory Committee (SPAC) will meet on July 15, 1994 from 9:00 a.m. to 4:30 p.m. in Room 1605 at the United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C.

The Committee was established on July 19, 1965, as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) National Spectrum Requirements Report;

(2) Automated Federal Spectrum Management System (AFSMS);

(3) Report on the NTIA Preliminary Report to Reallocate 200 MHz of Spectrum;

(4) Automated ITU Spectrum Management System;

(5) Intelligent Vehicle Highway System Frequency Requirements;

(6) Progress on the Federal Radiation Hazard Standard.

The meeting will be open to public observations. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before July 1, 1994. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Federal Information Relay Service (FIPS) on 1–800–877–8339.

Copies of the minutes will be available upon request 30 days after the meeting.

**FOR FURTHER INFORMATION, CONTACT:** Inquiries may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 1617M–7, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone 202–482–4487.

Dated: June 22, 1994.

**Richard A. Lancaster,**

*Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.*

[FR Doc. 94–15570 Filed 6–27–94; 8:45 am]

BILLING CODE 3510–60–M

## COMMODITY FUTURES TRADING COMMISSION

### Proposed Amendments Relating to the CME's Domestic Stock Index Futures Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of Proposed Contract Market Rule Changes.

**SUMMARY:** The Chicago Mercantile Exchange (CME) has submitted proposed rule amendments to the opening price limit provisions in its domestic stock index futures contracts. Under the proposal, each domestic stock index futures contract's opening price limit would not be in effect on any day when the closing price of the preceding Globex trading session is outside the price range that would be permitted under that contract's opening price limit provisions.[1]

In accordance with Section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation § 140.96, the Director of the Division of Economic Analysis (Division) on behalf of the Commission has determined that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons. On behalf of the Commission, the Division is requesting comment on this proposal.

**DATES:** Comments must be received on or before July 28, 1994.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Reference should be made to the amendments to the CME domestic stock index futures contracts.

**FOR FURTHER INFORMATION:** Contact Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, telephone 202–254–7303.

**SUPPLEMENTARY INFORMATION:** The overnight Globex session in the S&P 500 futures contract ends at 9:00 a.m. Eastern time.[2] The following regular trading session begins at 9:30 a.m. The price limit in effect at the end of the Globex session is 12 S&P 500 points above or below the previous day's settlement price. (Twelve S&P 500 points are equivalent to about 100 points in the Dow Jones Industrial Average (DJIA).) The opening price limit in effect at the beginning of the regular trading session is five S&P 500 points above or below the previous day's settlement price (equivalent to about 40 points in the DJIA). This price limit remains in effect until 9:40 a.m. Thus, the price limit in the S&P 500 futures contract during the preceding Globex session is wider than that in effect during the open of the following regular trading session.

The CME proposes that the S&P 500 futures contract's opening price limit not be in effect on any day that the closing price of the preceding Globex trading session is more than five points above or below the previous day's settlement price. According to the CME, this proposal will improve coordination between the opening and Globex price limits on days when the closing price on Globex exceeds the opening price limit.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity

[1] The affected CME domestic stock index futures contracts are in the Standard and Poor's 500 Stock Price Index (S&P 500), the Standard and Poor's MidCap 400 Stock Price Index, the Russell 2000 Stock Price Index, and the Major Market Index.

[2] In general, both the current and proposed provisions in the other CME domestic stock index futures contracts are analogous to those in the S&P 500 futures contract.

Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies of the proposed rule amendments can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 22, 1994.

**Blake Imel,**

*Acting Director.*

[FR Doc. 94–15603 Filed 6–27–94; 8:45 am]

BILLING CODE 6351–01–P

## DEPARTMENT OF EDUCATION

### Direct Grant Programs and Fellowship Programs; Correction

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year 1995; correction.

In the notice inviting applications for new awards for fiscal year 1995, in the issue of Friday, June 10, 1994, (59 FR 30190) make the following corrections:

1. On page 30198, in the chart for Office of Special Education and Rehabilitative Services—Office of Special Education Programs, in the listing for CFDA No. 84.029B, Preparation of personnel for careers in special education, in the fifth column, the estimated range of awards (per year) should read "75,000–115,000"; in the listing for CFDA No. 84.029D, preparation of leadership personnel, in the fifth column, the estimated range of awards (per year) should read "75,000–115,000"; and in the listing for 84.029E, Minority institutions personnel, in the fifth column, the estimated range of awards (per year) should read "75,000–115,000".

2. On page 30204, in the application notice for CFDA Nos. 84.025A and E, Services for Children with Deaf-Blindness Program, in the second column, last paragraph, the telephone number for Robin Buckler should read "(202) 205–9377".

3. On page 30206, in the continuation of the application notice for CFDA Nos. 84.029A–Q, Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training and Parent Training and Information Centers, in the second column, last paragraph (Absolute Priority 10), the last eight lines and reference should read: "The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth through five, and must include consideration of family involvement in early intervention and pre-school services. Training programs under this priority must have a significant interdisciplinary focus. (See 34 CFR 318.11(a)(3).)"

4. On page 30207, in the continuation of the application notice for CFDA No. 84.078, Postsecondary Education Programs for Individuals with Disabilities, in the first column, second-to-last paragraph, the telephone number for Oneida Jennings should read "(202) 205–8894".

5. On page 30208, in the continuation of the application notice for CFDA Nos. 84.086D, J, and U, Program for Children with Severe Disabilities, in the third column, in the paragraph headed "For Applications and General Information Contact:", the telephone number for Robin Buckler should read "(202) 205–9377".

6. On page 30209, in the application notice for CFDA Nos. 84.158D and Q, Secondary Education and Transitional Services for Youth with Disabilities Program, in the third column, last paragraph, the name of the individual to contact for applications and general information should read "Oneida Jennings".

In the same paragraph the telephone number for Oneida Jennings should read "(202) 205–8894".

Dated: June 22, 1994.

**Judith A. Winston,**

*General Counsel.*

[FR Doc. 94–15521 Filed 6–27–94; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Seattle Regional Support Office; Notice of Solicitation; Bioenergy Technologies

**AGENCY:** Department of Energy.

**ACTION:** Notice of Intent to Solicit.

**SUMMARY:** The U.S. DOE established regional biomass program to promote the development of effective uses of bioenergy for energy. The legislative authority directs U.S. DOE to "carry out activities related to technology transfer, industry support, resource assessment, and matching local resources to conversion technologies." The US DOE is seeking projects that demonstrate bioenergy technologies which produce energy saving through displacement of non-renewable resources, or that produce energy through the direct combustion of renewable resources. Projects will also be evaluated on their ability to minimize environmental impacts and their ability to improve the economic viability of a specific bioenergy industry or technology. Projects shall be located in the region consisting of the states Alaska, Washington, Oregon, Montana and Idaho. All project sponsors will be required to provide a minimum cost sharing of 1:1. Acceptable demonstration technologies will use one or more of the following biomass fuels: Landfill debris and landfill gas; logging residues; agricultural crops and wastes; biomass farming; urban, forest, and forest products wood wastes; municipal solid waste; animal wastes; and food processing wastes. Bioenergy projects can produce electricity, mechanical power, space heat, and industrial process heat. The U.S. DOE plans to award up to 5 grants of approximately $100,000 for each project. The U.S. DOE allocation for this program in FY 1994/95 is $450,000.

**DATES:** A solicitation will be available on or about July 5, 1994. Request for copies of the solicitation must be in writing to: U.S. Department of Energy, Seattle Support Office, Attn: Lisa Barnett, 800 Fifth Avenue, Suite 3950, Seattle, Washington, 98104. Proposals are due on August 18, 1994.

**ADDRESSES AND FURTHER INFORMATION:** U.S. Department of Energy (DOE), Seattle Support Office, Seattle, WA 98104, Contact Jeff James, (206) 553–2079.

Issued in Golden, Colorado, on June 20, 1994.

**John W. Meeker,**

*Chief, Procurement Team, GO.*

[FR Doc. 94–15655 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–M

### Gold Field Office; Notice of Grant Award to Howard University

**AGENCY:** Department of Energy.

**ACTION:** Notice of Noncompetitive Financial Assistance Award.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Howard University for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program at DOE. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Louise S. Urgo, Contract Specialist at (303) 275–4725. The Project Officer is G. William Ives at (303) 275–4755. The Contracting Officer is John W. Meeker.

**SUPPLEMENTARY INFORMATION:** Howard University has been conducting research for a number of years to develop genetic engineering techniques to enhance the capability of fungi/bacteria to degrade lignocellulose to simpler materials. Successful completion of this research would advance the goal of converting biomass to useful chemicals and other products. A detailed understanding of the processes that control the reactivity and specificity of enzymatic reactions within the fungi/bacteria will provide the knowledge needed to exploit these reactions for technological applications.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for this grant is estimated at $150,000 and the anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado, on June 20, 1994.

**John W. Meeker,**

*Chief, Procurement, Golden Field Office.*

[FR Doc. 94–15657 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–M

## Golden Field Office; Notice of Grant Award to University of Minnesota

**AGENCY:** Department of Energy.

**ACTION:** Notice of Noncompetitive Financial Assistance Award.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the University of Minnesota for continuing research efforts in support of the DOE Office of Building Energy Reserach programs. The project will experimentally evaluate a side-arm thermosiphon heat exchanger unit.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Government of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist, 303–275–4748.

**SUPPLEMENTARY INFORMATION:** The proposed basic research will contribute to the DOE mission by assisting in the development of improved solar heating technologies for use in buildings. Successful completion of this research would advance the goal of wide commercialization of solar heating systems. Deploying these technologies will reduce energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant is estimated at $50,000 and the anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado, on June 20, 1994.

**John W. Meeker,**

*Chief, Procurement, Golden Field Office.*

[FR Doc. 94–15658 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–M

## Pittsburgh Energy Technology Center; Notice of Noncompetitive Financial Assistance Award

**AGENCY:** Pittsburgh Energy Technology Center, Department of Energy.

**ACTION:** Notice of a Noncompetitive Financial Assistance Grant Award with the University of Texas, Bureau of Economic Geology.

**SUMMARY:** The Department of Energy (DOE), Pittsburgh Energy Technology announces that pursuant to 10 CFR 600.7(b)(2)(i)(B), it intends to award a grant to the University of Texas, Bureau of Economic Geology (BEG) for a research effort entitled "Midland Core Repository."

**ADDRESSES:** Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

**FOR FURTHER INFORMATION CONTACT:** Jo Ann C. Zysk, Contract Specialist (412) 892–6200.

**SUPPLEMENTARY INFORMATION:**

*Grant Number:* DE–FG22–94BC14854

*Title of the Research Effort:* "Midland Core Repository"

*Awardee:* University of Texas, Bureau of Geology

*Term of Assistance Effort:* Sixty (60) months

*Grant Estimated Total Value:* $700,000.00 (DOE: $400,000.00; *Cost-Sharing:* $300,000.00)

*Objective:* The objective of this effort is to provide a means of assisting the public in the utilization of a public core repository. The goal is to assist industry with maximizing recovery from domestic oil reservoirs by providing a facility that will preserve and make accessible a collection of irreplaceable core samples from wells in reservoirs throughout the United States. In order for small operators to be able to economically conduct development of existing fields and exploration for new oil resources there is a need for geologic data, including cores, from the existing fields.

*Justification:* Implementation of the proposed grant is based upon the authority of 10 CFR 600.7(b)(2)(i)(B). This is a sixty month research effort with an estimated value of $700,000.00 (DOE: $400,000.00; Total Cost-Sharing: $300,000.00). The research developed under this grant will be cost-shared by the Department of Energy and the University of Texas.

**Dale A. Siciliano,**

*Contracting Officer.*

[FR Doc. 94–15654 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–M

## Kansas City Support Office; Region VII State Energy Offices

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of availability of Financial Assistance Solicitation.

**SUMMARY:** This document announces the issuance of Program Solicitation No. PS–KCSO–94002 by the Department of Energy, Kansas City Support Office (KCSO). The solicitation invites grant applications from State Weatherization Assistance Program (WAP) grantees located in Federal Region VII (Iowa, Kansas, Missouri & Nebraska) for funding of a project in support of the WAP.

**ADDRESSES:** Department of Energy, Kansas City Support Office, 911 Walnut, 14th Floor, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Cynthia A. King, Grants Management Division, (816) 426–3816; or Jo Ann Timm, Contracting Officer, (816) 426–3116.

**APPLICATION PROCEDURES:** The Program Solicitation and Grant Applications have been provided to each State Weatherization Assistance Program (WAP) grantee in the KCSO area and must be received no later than July 30, 1994. Application content and evaluation criteria are set forth in the Program Solicitation.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The U.S. Department of Energy, Kansas City Support Office (KCSO), is making $10,000 in funding available as part of its Weatherization Assistance Program (WAP) Training and Technical Assistance (T&TA) Program. The area for which the KCSO is seeking a grant proposal is the Region VII Technical Working Group Project.

**II. Eligible Grantees**

Eligible grantees are the Weatherization Assistance Program (WAP) grantees located in the area serviced by the DOE–KCSO (Iowa, Kansas, Missouri and Nebraska).

**III. Eligible Activities**

The grant issued pursuant to this Notice is limited to activities associated with the Technical Working Group Project. Suggested activities support the transfer of technical information, development of regional weatherization training sessions, automated energy audits and diagnostic techniques, or other topics applicable to the Weatherization Assistance Program (WAP).

It is anticipated that the grant award will be issued by September 1, 1994.

Issued in Golden, Colorado on June 16, 1994.

**John W. Meeker,**

*Chief, Procurement, GO.*

[FR Doc. 94–15656 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

**[Docket Nos. CP93–618–000 and 00]**

## Pacific Gas Transmission Company; Intent To Prepare an Environmental Assessment for the Proposed PGT Expansion II Project

June 22, 1994.

On November 17, 1993 the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Intent to Prepare a Joint Draft Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) with the California State Lands Commission (SLC) for the above proposed PGT Expansion II Project and a related project proposed by Tuscarora Gas Transmission Company in Docket CP93–685–000 (Tuscarora Pipeline Project). The purpose of the Notice was to request comments on environmental issues. On May 31, 1994, PGT filed an amendment to its original application. In a June 8, 1994 response to a FERC staff data request, PGT confirmed that no expansion of its mainline facilities is required to provide service to the Tuscarora Pipeline Project. From the standpoint of the environmental analysis, the important changes to the PGT Expansion II Project are:

- The elimination of the additional compression originally proposed at the Sandpoint, Idaho and Rosalia, Washington Compressor Stations;
- The removal from the above proceedings of three meter runs inside PGT's existing Malin Meter Station in southern Oregon; the meter runs will still be necessary to serve the Tuscarora Pipeline Project, but will now be proposed under section 157.208(a) of the Commission's regulations (18 CFR 157.208(a)).
- The elimination of one meter station proposed in Klamath Falls, Oregon;
- The addition of two service taps on the Medford Extension Lateral;
- Route realignments that increase the total miles of the Medford Extension Lateral (pipeline) to be constructed from 84.17 miles to 86.5 miles (see Table 1) [1]; and
- Route realignments that increase the total miles of the Coyote Springs Extension Lateral (pipeline) to be constructed from 17.71 miles to 18.5 miles (see Table 1).

Prior to this amendment, the PGT Expansion II and the Tuscarora Pipeline Projects were being processed concurrently because of the inclusion in Docket No. CP93–618–000 of additional system compression and the meter runs at Malin needed to deliver gas to the Tuscarora Pipeline Project. However, the proposed amendment to eliminate the compression and the proposal to build the meter runs under separate authority make the PGT Expansion II Project a stand-alone proposal which can be considered separately from the Tuscarora Pipeline Project.

Based on the above changes, we have determined that an environmental assessment (EA), rather than an environmental impact statement, is the appropriate document for analyzing the potential environmental impacts associated with the PGT Expansion II Project. We are now preparing this document. Since the PGT facilities will be located outside the State of California, the SLC will not be a cooperating agency in the preparation of this EA. We are proceeding with a joint EIR/EIS with the SLC for the Tuscarora Pipeline Project. The three meter runs inside PGT's existing Malin Meter Station will be addressed as a related facility in that joint EIR/EIS.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from a major Federal action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The EA we are preparing will give the Commission the information it needs to do that. If the EA concluded that the project would result in significant environmental impacts, the Commission would prepare an environmental impact statement. Otherwise a Finding of No Significant Impact would be produced.

NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues, and to separate these from issues that are insignificant and do not require detailed study. Although the scoping of the original project has already been completed, we are now asking for any additional comments only on the relocated or new portions of the project as currently proposed. Local scoping meetings have already been conducted for the original project. Additional scoping meetings are not anticipated.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general subject headings:

- Geology and paleontology.
- Endangered and threatened species.
- Visual resources.
- Water resources.
- Vegetation.
- Land use.
- Air quality and noise.
- Wetland and riparian habitat.
- Cultural resources.
- Fish and wildlife.
- Socioeconomics.
- Soils.

We will also evaluate possible alternatives to the project, or portions of the project, and make recommendations

[1] The table and appendices are not printed in the Federal Register, but have been mailed to all receiving this notice. Copies are also available from the Commission's Public Reference Branch, Room 3104, 941 North Capitol St., NE, Washington, DC 20426.

on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will result in the publication of the EA which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings.

**Public Participation**

You can make a difference by sending a letter with your specific comments or concerns about the projects. You should focus on the potential environmental effects of the new portions of the proposal (see Table 1). You do not need to re-submit comments if you have already done so in this proceeding. We are particularly interested in alternatives to the proposals (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP93–618–001;
- Send a copy of your letter to: Ms. Alisa Lykens, Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312 Washington, DC 20426; and
- Mail your comments so they will be received in Washington DC on or before July 28, 1994.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceedings or an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) which is attached as appendix 1[2]. You do not need intervenor status to have your scoping comments considered.

**Environmental Mailing List**

If you don't want to send comments at this time but still want to receive a copy of the EA, please return the Information Request (appendix 2)[3]. If you have previously returned the Information Request you need not do so again.

Additional information about the proposed project is available from Ms. Alisa Lykens, EA Project Manager, at (202) 208–0766.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–15587 Filed 6–27–94; 8:45 am]

BILLING CODE 6717–01–P

[2] See footnote 1.

[3] See footnote 1.

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**[Docket Nos. CP93–685–000]**

## Tuscarora Gas Transmission Co.; Supplemental Notice of Intent To Prepare an Environmental Impact Report/Environmental Impact Statement for the Tuscarora Pipeline Project

June 22, 1994.

On November 17, 1993 the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Intent to Prepare a Joint Draft Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) with the California State Lands Commission (SLC) for the above proposed Tuscarora Pipeline Project and a related project proposed by Pacific Gas Transmission Company in Docket CP93–618–000 (PGT Expansion II Project). The purpose of the Notice was to request comments on environmental issues. On May 31, 1994, PGT filed an amendment to its original application. In a June 8, 1994 response to an FERC staff data request, PGT confirmed that no expansion of its mainline facilities is required to provide service to the Tuscarora Pipeline Project.

Prior to this amendment, the Tuscarora Pipeline and the PGT Expansion II Projects were being processed concurrently because of the inclusion in Docket No. CP93–618–000 of additional system compression and three meter runs at Malin needed to deliver gas to the Tuscarora Pipeline Project. However, PGT's proposed amendment to eliminate the compression and their proposal to build the meter runs under separate authority make the Tuscarora Pipeline Project a stand-alone proposal which can be considered separately from the PGT Expansion II Project.

Based on the above changes, we are proceeding with the joint EIR/EIS with the SLC for the Tuscarora Pipeline Project. The three meter runs at Malin will still be addressed as a related facility in the joint EIR/EIS.

**Public Participation and Scoping**

NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping" The main goal of the scoping process is to focus the analysis in the EIR/EIS on the important environmental issues. and to separate these from issues that are insignificant and do not require detailed study. Since scoping of the original project has already been completed, and no new facilities are being proposed. we are not seeking additional comments. Local scoping meetings have already been conducted for the original project Additional scoping meetings are not anticipated. The purpose of this notice is to inform you that the PGT compression facilities are no longer within the scope of the joint EIR/EIS

Additional information about the proposed project is available from Ms. Alisa Lykens, EIR/EIS Project Manager at (202) 208–0766.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–15581 Filed 6–27–94; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. CP94–606–000, et al.]**

## Texas Eastern Transmission Corp. et al.; Natural Gas Certificate Filings

June 21, 1994.

Take notice that the following filings have been made with the Commission:

**1. Texas Eastern Transmission Corporation**

[Docket No. CP94–606–000]

Take notice that on June 16, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P. O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP94–606–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its Rate Schedule X–79 transportation service for Transcontinental Gas Corporation, (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Texas Eastern is seeking authority to abandon firm transportation service it provides for Transco under the Rate Schedule X–79 as authorized in Docket No. CP76–362–000. Texas Eastern states that such transportation service was provided for Transco pursuant to the terms and conditions of a Transportation Agreement dated March 23, 1976, included as Rate

Schedule X–79 of Texas Eastern's FERC Gas Tariff, Original Volume No. 2.

Texas Eastern states that Transco requested it to transport certain quantities of natural gas from Texas Eastern's Block 245, East Cameron, offshore Louisiana; and/or an existing sub-sea tap on Texas Eastern's offshore pipeline system in West Cameron Block 286, offshore Louisiana; and/or an existing sub-sea tap on Texas Eastern's offshore pipeline system in East Cameron Block 312, offshore Louisiana. Texas Eastern further states that the gas is delivered to an existing interconnection of facilities of Texas Eastern and Transco near Ragley, Louisiana; and/or by mutual agreement with Transco, at other points in the supply area and where delivery can be accomplished to or for the account of Transco.

Texas Eastern states that the Transportation Agreement has a primary term of eighteen (18) years from the date of initial delivery, and from year to year thereafter until terminated by either party upon two (2) years prior written notice. Texas Eastern states that Transco, by letter dated December 7, 1992, notified Texas Eastern of its election to terminate Rate Schedule X–79 at the end of the primary term, December 17, 1994.

Texas Eastern does not propose to abandon any facilities.

*Comment date:* July 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

**2. CNG Transmission Corporation**

[Docket No. CP94–609–000]

Take notice that on June 16, 1994, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP94–609–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a sales tap for the delivery of natural gas to Hope Gas, Inc. (Hope), a local distribution company in West Virginia and an affiliate of CNG, under CNGT's blanket certificate issued in Docket No. CP82–537–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CNGT proposes to install the tap and appurtenant facilities on its 10-inch line TL–259 in Harrison County, West Virginia, in order to facilitate deliveries by Hope to the Federal Bureau of Investigation's complex under construction near Clarksburg, West Virginia. The construction cost is estimated at $5,000, and it is stated that CNGT would be reimbursed by Hope. It is asserted that CNGT has sufficient capacity to deliver up to 1,500 Mcf of gas per day to Hope without any disadvantage to other customers.

*Comment date:* August 5, 1994, in accordance with Standard Paragraph G at the end of this notice.

**3. National Fuel Gas Supply Corporation**

[Docket No. CP94–616–000]

Take notice that on June 20, 1994, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–616–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate two delivery tap connections to attach new residential customers of National Fuel Gas Distribution Corporation (Distribution), in Erie and Mercer Counties, Pennsylvania, under the blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National Fuel proposes to construct and operate residential delivery taps in Mercer and Erie Counties, Pennsylvania to serve two residential customers of Distribution, Dennis J. Charlton and Robert Winslow, respectively. National Fuel indicates that it would deliver 150 Mcf per year to each facility.

National Fuel states that the total volumes to be delivered to Distribution after this request do not exceed the total volumes authorized prior to this request. National Fuel also states that it has sufficient system delivery flexibility to accomplish these deliveries without detriment or disadvantage to its other customers. National Fuel further states that the addition of the delivery point would have minimal impact on its peak day or annual deliveries. It is also stated that National Fuel's tariff does not prohibit the addition of new delivery taps.

*Comment date:* August 5, 1994, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 94–15582 Filed 6–27–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2674 Vermont]

## Green Mountain Power Corp.; Intent To File an Application for a New License

June 22, 1994.

Take notice that Green Mountain Power Corporation, the existing licensee for the Vergennes Hydroelectric Project No. 2674, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2674 was issued effective June 1, 1949, and expires May 31, 1999.

The project is located on Otter Creek in Addison County, Vermont. The principal works of the Vergennes Project include three concrete overflow dams and one non-overflow dam about ten feet high with a total length of 231 feet and located at the top of a natural falls; a reservoir of about 200 acre-feet storage; a north forebay with racks and headgates to two 7-foot diameter steel penstocks; a north powerhouse with an installed capacity of 1000 kW; a south forebay with racks, headgates and surge tanks to two 9-foot diameter penstocks; a south powerhouse with an installed capacity of 1,400 kW; connections to a 2.4 kV bus at a substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 25 Green Mountain Drive, South Burlington, VT 05403.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 1997.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–15584 Filed 6–27–94; 8:45 am]

BILLING CODE 6717–01–M

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[Project No. 2778 Idaho]

## Idaho Power Co.; Intent To File an Application for a New License

June 22, 1994.

Take notice that Idaho Power Company, the existing licensee for the Shoshone Falls Hydroelectric Project No. 2778, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2778 was issued effective June 1, 1949, and expires May 31, 1999.

The project is located on the Snake River in Jerome and Twin Falls Counties, Idaho. The principal works of the Shoshone Falls Project include a dam divided into four sections by natural solid rock islands in the river, section one and three being Ambursen reinforced concrete, section two a concrete gravity, and section four a gated concrete, all overflow types and above the Falls; a reservoir of about 750 acre-feet storage; a reinforced concrete intake, a concrete lined tunnel and a steel penstock, together 176 feet long; a powerhouse on the right bank of the river below the falls and with 12,500 kW installed capacity; a 46 kV substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7 the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 1221 West Idaho Street, Corporate Library, Second Floor, P.O. Box 70, Boise, Idaho 83707, Phone: (208) 383–2491.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 1997.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–15585 Filed 6–27–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP94–220–000]

## Northwest Pipeline Corp.; Informal Settlement Conference

June 22, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10:00 a.m. on July 7, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets. More specifically, Northwest will present an overview of its filing.

Any party, as defined by 18 CFR § 385.102(c), or any participant as defined in 18 CFR § 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR § 385.214) prior to attending.

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Donald Williams (202) 208–0743.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–15586 Filed 6–27–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP94–533–000]

## Tennessee Gas Pipeline Co.; Technical Conference

June 22, 1994.

Take notice that on July 21, 1994, at 10 a.m., the Commission Staff will convene a technical conference in the above captioned docket to discuss issues raised by the intervenors related to the proposal of Tennessee to abandon by sale, to Channel Industries Gas Company, either a undivided 30% interest in its "San Salvador" and its "La Rosa/Mustang Island," or alternatively, a undivided 100% interest in these facilities to Channel.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 1st Street NE., Washington, DC 20426. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

For further information, contact George Dornbusch (202) 208–0881, Office of Pipeline Regulation, Room 7102C; or Hyun Kim (202) 208–2960, Office of General Counsel, Room 4014, 825 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–15583 Filed 6–27–94; 8:45 am]

BILLING CODE 6717–01–M

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## Office of Fossil Energy

[FE Docket No. 94–36–NG]

## Chevron U.S.A. Inc.; Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Chevron U.S.A. Inc. blanket authorization to import up to 73 Bcf of natural gas from Canada over a two-year term commencing on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 8, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–15650 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–M

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**[FE Docket No. 94–44–NG]**

## CoEnergy Trading Company; Order Granting Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CoEnergy Trading Company (CTC) authorization to import up to 72 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery.

CTC's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 14, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–15652 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–P

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**[FE Docket No. 94–41–NG]**

## SEMCO Energy Services, Inc.; Blanket Authorization To Export Natural Gas to Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting SEMCO Energy Services, Inc. blanket authorization to export up to 800 Bcf of natural gas to Canada over a two-year term beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 9, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–15651 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–P

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**[FE Docket No. 94–45–NG]**

## Southwest Gas Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Southwest Gas Corporation authorization to import up to 12 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 8, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–15653 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–P

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## Office of Hearings and Appeals

## Cases Filed During the Week of May 13 through May 20, 1994

During the Week of May 13 through May 20, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For the purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 20, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 13 through May 20, 1994]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 05/16/94 | Marlene Flor, Albuquerque, NM | LFA–0378 | Appeal of an Information Request Denial. If granted: The May 4, 1994 Freedom of Information Request Denial issued by the FOI and Privacy Acts Branch would be rescinded, and Marlene Flor would receive access to all documents that exist regarding her in the Department of Energy. |
| 05/17/94 | David Ramirez, Babylon, NY | LWX–0013 | Supplemental Order. If granted: David Ramirez would be awarded $89,822.08 in damages and $31,652.20 in attorney's fees as a result of Brookhaven National Laboratory's reprisal against him in violation of the DOE Whistleblower Regulations at 10 C.F.R. Part 708. |
| 05/17/94 | Independent Farmers Oil Company, Keene, ND. | LEE–0118 | Exception to the Reporting Requirements. If granted: Independent Farmers Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report." |

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 13 through May 20, 1994]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 05/17/94 | Jap Oil Corporation, Levelland, TX | LEE–0117 | Exception to the Reporting Requirements. If granted: Jap Oil Corporation would not be required to file Form EIA–23, "Annual Survey of Domestic Oil & Gas Reserves." |
| 05/19/94 | Wayne M. Cooper, Overland Park, KS | LFA–0380 | Appeal of an Information Request Denial. If granted: Wayne M. Cooper would receive access to DOE information regarding the 1993 Senior Executive Service Candidate Development Program. |
| 05/19/94 | Westinghouse Hanford Company, Richland, WA. | LWJ–0004 | Request for Protective Order. If granted: Westinghouse Hanford Company would enter into a Protective Order regarding the release of confidential information to Ms. H. G. Oglesbee in connection with her whistleblower hearing, OHA Case No. LWA–0006. |
| 05/20/94 | John M. Eaves | LFA–0379 | Appeal of an Information Request Denial. If granted: The April 16, 1994 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and John M. Eaves would receive access to all documents concerning the manufacturing plant and real property located in Albuquerque, New Mexico, which was operated by the U.S. Atomic Energy Commission from 1951 to 1967. |

REFUND APPLICATIONS RECEIVED

[Week of May 13 to May 20, 1994]

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 05/16/94 | Delta Purchasing Federation | RF344–3. |
| Do | S.F. Services | RF344–4. |
| Do | Great American Airways | RF344–5. |
| Do | Countrymark, Inc. | RF344–6. |
| Do | Commonwealth Edison Company | RF339–19. |
| 05/13/94 thru 05/20/94 | Crude Oil Refund | RF272–95296 thru RF272–95736. |

[FR Doc. 94–15649 Filed 6–27–94; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44610; FRL–4874–3]

### TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on N-methylpyrrolidone (NMP) (CAS No. 872–50–4), submitted pursuant to a testing consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

#### I. Test Data Submissions

Test data for NMP were submitted by the NMP Producers Group, on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on May 24, 1994. The submissions describe the subchronic oral toxicity 28-day feeding study in rats and a repeated dose toxicity study in B6C3F1 Mice: Administration in the diet for 4 weeks (range finding study) with NMP. This chemical is an inert, stable, polar solvent that is used in a wide variety of processes. Its commercial uses result from its strong and frequently selective solvent power. One of the major uses of NMP is the extraction of aromatics from lubricating oils. It is also used as a medium for polymerization and as a solvent for finished polymer. It is the preferred solvent in a variety of chemical reactions and the manufacture of numerous chemical intermediates and end products such as plastics, surface coatings, and pesticides. An important new use of this chemical is as a substitute for methylene chloride in paint strippers. NMP is also used in the recovery and purification of acetylene, olefin, and diolefins, in the removal of sulfur compounds from natural and refinery gases, and in the dehydration of natural gas.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

#### II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44610). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B–607

Northeast Mall, 401 M St., SW., Washington, DC 20460.

**Authority:** 15 U.S.C. 2603.

**List of Subjects**

Environmental protection, Test data.

Dated: June 14, 1994.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 94–15680 Filed 6–27–94; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before August 29, 1994.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

*Type:* Extension of 3067–0148.

*Title:* Consultation with Local Officials to Assure Compliance with Sections 110 and 206 of the Flood Disaster Protection Act of 1973.

*Abstract:* These certification forms will provide FEMA with assurance that all pertinent data relating to revision to effective Flood Insurance studies are included in the submittal for revisions. They will also assure that all individuals and organizations impacted by the changes are aware of the changes and have an opportunity to comment on them.

*Type of Respondents:* State or Local Governments.

*Estimate of Total Annual Reporting and Recorkeeping Burden:* 5,502 hours.

*Number of Respondents:* 700.

*Estimated Average Burden Time per Response:* 7.86 hours.

*Frequency of Response:* On occasion.

Dated: June 17, 1994.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 94–15614 Filed 6–27–94; 8:45 am]

BILLING CODE 6718–01–M

### Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before August 29, 1994.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

*Type:* Extension of 3067–0147.

*Title:* Report to Submit Technical or Scientific Data to Correct Mapping Deficiencies Unrelated to Community-Wide Elevation Determinations

*Abstract:* The certification forms are designed to assist requesters in gathering the information that FEMA needs to determine whether a certain property is likely to be flooded during the flood event that has a 1-percent chance of being equaled or exceeded in any given year (base flood).

*Type of Respondents:* Individuals or households.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 11,232 hours.

*Number of Respondents:* 2,700.

*Estimated Average Burden Time per Response:* 4.16 hours.

*Frequency of Response:* On occasion.

Dated: June 17, 1994.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 94–15615 Filed 6–27–94; 8:45 am]

BILLING CODE 6718–01–M

**[FEMA–1030–DR]**

### District of Columbia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the District of Columbia (FEMA–1030–DR), dated June 17, 1994, and related determinations.

**EFFECTIVE DATE:** June 17, 1994.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated June 17, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the District of Columbia, resulting from a severe winter ice storm on January 17–21, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the District of Columbia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated area. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the District to have been affected adversely by this declared major disaster:

District of Columbia for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance).

**James L. Witt,**

*Director.*

[FR Doc. 94–15616 Filed 6–27–94; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL MARITIME COMMISSION

**[Docket No. 94–12]**

### Spark International Trading, Inc. v. Danzas Corporation, Nordstar Line, S.A. and Great Eastern Shipping, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Spark International Trading, Inc. ("Complainant") against Danzas Corporation ("Danzas"), Nordstar Line, S.A. ("Nordstar") and Great Eastern Shipping, Inc. ("Great Eastern") was served June 22, 1994. Complainant alleges that: (1) Respondents Danzas violated section 10(d)(1) of the Shipping Act 1984 ("the Act"), 46 U.S.C. app. 1709(d)(1), *inter alia,* by holding itself out as an ocean common carrier and an ocean freight forwarder for the transportation of Complainant's cargo from Baltimore to St. Petersburg, Russia, failing to provide such transportation, having no intention of ever providing such transportation, failing to use reasonable care in selecting Nordstar/Great Eastern, alleged non-vessel operating common carriers, to arrange such transportation, failing to verify that Nordstar/Great Eastern had filed the agreed upon rate, and failing to take necessary steps to arrange and supervise the transport and timely delivery of complainant's cargo; and (2) Respondents Nordstar and Great Eastern violated sections 10(b)(1) and (5) and 10(d)(1) of the Act, 46 U.S.C. app. 1709(b)(1) and (5) and (d)(1), by failing to take steps reasonably necessary to arranging and supervising the transport and timely delivery of Complainant's cargo, holding cargo pending payment of new, higher freight charges not shown in Nordstar's tariff, and retaliating Complainant by demanding a higher than agreed upon rate because Complainant sought the assistance of legal counsel.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61 and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by June 22, 1995, and the final decision of the Commission shall be issued by October 20, 1995.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 94–15601 Filed 6–27–94; 8:45 am]

BILLING CODE 6730–01–M

### Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

International Cargo Experts, 12410 Texas Army Trail, Cypress, Texas 77429, Julia G. Bench, Sole Proprietor

Jagro California Inc., 5777 West Century Blvd., #830, Los Angeles, CA 90045, Officers: Carmen Connie Braverman, President, Gerhard Grob, Executive Vice President, John Jaisli, Secretary

E.R.A. Freight Forwarding Inc., 3019 NW 74th Ave., 2nd floor, Miami, FL 33122, Elena Benitez, President, Ana V. Del Castillo, Vice President

Brye International, Inc., 77 Evergreen Ave., Brooklyn, NY 11206, Officers: Robert L. Kormos, President, Bella Foss, Vice President

SCR International Freight Forwarding, Inc., 130 Minorca Ave., Coral Gables, FL 33134, Officers: Alvaro G. Smith, Chief Operating Officer, Jose E. Smith, Treasurer

Sino Am Cargo, Inc., 501 Grandview Drive, suite 209, South San Francisco, CA 94080, Officer: Ricky H. Leung, President

Bauhinia International, 124–12 111th Ave., Jamaica, NY 11420, Dominica Siu, Sole Proprietor

By the Federal Maritime Commission

Dated: June 22, 1994.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 94–15548 Filed 6–27–94; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL TRADE COMMISSION

**[Dkt. 9251]**

### Synchronal Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Thomas L. Fenton, a former officer of Synchronal Corporation, from disseminating a purported baldness cure infomercial, for a product called Omexin; from misrepresenting that any commercial is an independent program; and from making unsubstantiated claims for any food, drug or device in the future.

**DATES:** Complaint issued October 28, 1991. Amended Complaint issued October 6, 1993. Order issued May 13, 1994.[1]

**FOR FURTHER INFORMATION CONTACT:** Lisa Kopchik, FTC/s–4002, Washington, DC 20580, (202) 326–3139.

**SUPPLEMENTARY INFORMATION:** On Wednesday, February 23, 1994, there was published in the **Federal Register**, 59 FR 8645, a proposed consent agreement with analysis In the Matter of Synchronal Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has made its jurisdictional findings and entered an order to cease and desist, as set forth in

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52. 39 U.S.C. 3009)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 94–15630 Filed 6–27–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9226]

## Textron Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the respondent to license to a Commission-approved entity the right to manufacture and sell Monobolt rivets, divest to the licensee certain Monobolt manufacturing assets, and provide technical assistance to the licensee for five years.

**DATES:** Complaint issued February 28, 1989. Order issued May 6, 1994.[1]

**FOR FURTHER INFORMATION CONTACT:** Howard Morse, FTC/S–3627, Washington, DC 20580, (202) 326–6320.

**SUPPLEMENTARY INFORMATION:** On Friday, November 12, 1993, there was published in the **Federal Register**, 58 FR 60026, a proposed consent agreement with analysis In the Matter of Textron Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 94–15631 Filed 6–27–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3493]

## Unocal Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the companies from making claims about the attributes or performance of any gasoline without first having competent and reliable scientific evidence to substantiate their claims. In addition, the respondents are required to mail their credit-card customers, in certain states, a notice advising consumers to check their owner's manual to determine the proper octane level of gasoline to purchase.

**DATES:** Complaint and Order issued April 28, 1994.[1]

**FOR FURTHER INFORMATION CONTACT:** Russell Deitch, FTC/Los Angeles Regional Office, 11000 Wilshire Boulevard, suite 13209, Los Angeles, CA 90024, (310) 575–7890.

**SUPPLEMENTARY INFORMATION:** On Thursday, February 10, 1994, there was published in the **Federal Register**, 59 FR 6270, a proposed consent agreement with analysis In the Matter of Unocal Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 94–15632 Filed 6–27–94; 8:45 am]

BILLING CODE 6750–01–M

## Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05/31/94 AND 06/10/94

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Norex America, Inc., American Premier Underwriters, Inc., DI Industries, Inc | 94–1395 | 05/31/94 |
| Richard S. Crawford, Rockwell International Corporation, Butler Polymet, Inc. & Rockwell International Corp | 94–1300 | 06/01/94 |
| MCN Corporation, The Prudential Insurance Company of America, Sanguine/P Anadarko Limited Partnership | 94–1350 | 06/01/94 |
| Burlington Resources Inc., Maxus Energy Corporation, Maxus Exploration Company | 94–1382 | 06/01/94 |
| Computer Associates International, Inc., The ASK Group, Inc., The ASK Group, Inc | 94–1417 | 06/01/94 |
| EZ Communications, Inc., Chrysler Corporation, CLG Media of Seattle, Inc | 94–1329 | 06/02/94 |
| CareLine, Inc., Secom Co., Ltd., Life Fleet, Inc | 94–1340 | 06/02/94 |
| JUSCO Co., Ltd., Revman Industries Inc., Revman Industries Inc | 94–1351 | 06/02/94 |

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[1] Copies of the Complaint, the Decision and Order, and the statements of Commissioners Owen and Starek are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05/31/94 AND 06/10/94—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Bessemer Securities Corporation, Richard Maslow, Metropolitan International, Inc | 94-1360 | 06/02/94 |
| National Patent Development Corporation, General Physics Corporation, General Physics Corporation | 94-1369 | 06/02/94 |
| Golder, Thoma, Cressey, Rauner Fund IV L.P., Metra Corporation, Southern Ready Mix, Inc | 94-1396 | 06/02/94 |
| Gray Communications Systems, Inc., Kentucky Central Life Ins. Company, Kentucky Central Television, Inc | 94-1404 | 06/02/94 |
| Nestle S.A., Dreyer's Grand Ice Cream, Inc., Dreyer's Grand Ice Cream, Inc | 94-1349 | 06/06/94 |
| Host Marriott Corporation, Health and Rehabilitation Properties Trust, Holiday Inn Crowne Plaza Hotel—Washington, DC | 94-1380 | 06/06/94 |
| Marubeni Corporation, BM Group PLC, Mitchell Distributing Company | 94-1381 | 06/06/94 |
| Ford Motor Company, Amoco Corporation, Amoco Corporation | 94-1393 | 06/06/94 |
| Grand Metropolitan Public Company, Alfred Neuhauser, Rudi Foods, Inc | 94-1397 | 06/06/94 |
| First Financial Management Corporation, AT&T Corp., AT&T Global Information Solutions Company | 94-1399 | 06/06/94 |
| Ronald O. Perelman, Great American Communications Company, Great American Television and Radio Company, Inc | 94-1413 | 06/06/94 |
| Sensormatic Electronics Corporation, Morgenthaler Venture Partners III, Software House Inc | 94-1419 | 06/06/94 |
| M. Thomas Grumbacher, Adam, Meldrum & Anderson Co., Inc., Adam, Meldrum & Anderson Co., Inc | 94-1422 | 06/06/94 |
| Heller & Friedman Capital Partners II, L.P., MARKETS Cellular Limited Partnership, MARKETS Cellular Limited Partnership | 94-1425 | 06/06/94 |
| John W. Stanton and Theresa E. Gillespie (spouses), Heller & Friedman Capital Partners II, L.P., Western Wireless Corporation | 94-1426 | 06/06/94 |
| GS Capital Partners, L.P., Heller & Friedman Capital Partners II, L.P., Western Wireless Corporation | 94-1427 | 06/06/94 |
| Odyssey Partners, L.P., Heller & Friedman Capital Partners II, L.P, Western Wireless Corporation | 94-1428 | 06/06/94 |
| Providence Media Partners L.P., Heller & Friedman Capital Partners II, L.P., Western Wireless Corporation | 94-1429 | 06/06/94 |
| River City Broadcasting, L.P., Robert M. Bass, Continental Broadcasting, Ltd | 94-1437 | 06/06/94 |
| 1988 Trust for Curtis G. Watkins II, Digital Equipment Corporation, Digital Equipment Corporation | 94-1444 | 06/06/94 |
| 1988 Trust for Kristina Waite Watkins, Digital Equipment Corporation, Digital Equipment Corporation | 94-1445 | 06/06/94 |
| The Mutual Life Assurance Company of Canada, Beneficial Life Insurance Company, Continental Western Life Insurance Company | 94-1458 | 06/06/94 |
| Harbor Distributing Co., Philip Morris Companies Inc., Santa Ana Beverage Incorporated | 94-1401 | 06/07/94 |
| The RTZ Corporation, W.R. Grace & Co., Colowyo Coal Company, L.P. & Mountainview Insurance Co | 94-1403 | 06/07/94 |
| Thomas R. Galloway, Stephen Adams, Adams TV of Memphis, Inc. and GTH-103, Inc | 94-1418 | 06/07/94 |
| Circle K Corporation, Kwik-Stop Limited Partnership, Kwik-Stop Limited Partnership and Kwik-Stop Corporation | 94-1410 | 06/08/94 |
| Sandoz Ltd., Gerber Products Company, Gerber Products Company | 94-1435 | 06/08/94 |
| Time Warner Inc., Howard S. Maier, The Maier Group, Inc | 94-1339 | 06/09/94 |
| Broad Street Investment Fund I, L.P., Solon Automated Services, Inc., Solon Automated Services, Inc | 94-1363 | 06/09/94 |
| Robert P. Kirby, Borden, Inc., Borden, Inc | 94-1388 | 06/09/94 |
| General Motors Corporation, Xerox Corporation, Xerox Corporation | 94-1402 | 06/09/94 |
| Fisher Scientific International Inc., Figgie International Inc., Figgie International Inc | 94-1406 | 06/09/94 |
| Carondelet Health System, Inc., Santa Marta Hospital, Santa Marta Hospital | 94-1439 | 06/09/94 |
| Marriott International, Inc., Christopher B. Hemmeter, Kauai Hotel, L.P | 94-1449 | 06/09/94 |
| Burlington Resources Inc., Burlington Resources Inc., Diamond Shamrock Offshore Partners Limited Partnership | 94-1451 | 06/09/94 |
| Marubeni Corporation, Royal Dutch Petroleum Company, Agripro Biosciences Inc | 94-1456 | 06/09/94 |
| Mitsui & Co., Ltd., Estate of Theodore G. Schad, Jr., Schad Industries, Inc | 94-1485 | 06/09/94 |
| HM/Hat Brands, L.P., Bob W. Coleman, Texace Corporation | 94-1330 | 06/10/94 |
| IVAX Corporation, North American Vaccine, Inc., North American Vaccine, Inc | 94-1356 | 06/10/94 |
| Mr. Monroe Stuart Millar, Eastman Kodak Company, Datatape Incorporated | 94-1420 | 06/10/94 |
| Walter J. Wolpin, Donald L. Klopcic, Sr., Don Lee Distributor, Inc | 94-1448 | 06/10/94 |
| Baxter International Inc., MediSense, Inc., MediSense, Inc | 94-1454 | 06/10/94 |
| Lonrho Plc, Lonrho Plc, The Hondo Company | 94-1459 | 06/10/94 |
| Tarmac PLC, Lone Star Industries, Inc., Lone Star Industries, Inc | 94-1464 | 06/10/94 |
| RMC Group, p.l.c., Lone Star Industries, Inc., Santa Cruz Corporation | 94-1465 | 06/10/94 |
| Richard H. Pickup, Pac Rim Holdings Corporation, Pac Rim Holdings Corporation | 94-1471 | 06/10/94 |
| Health o Meter Products, Inc., Mr. Coffee, Inc., Mr. Coffee, Inc | 94-1472 | 06/10/94 |
| Eureko b.V., Mutual of Enumclaw Insurance Company, Enumclaw Life Insurance Company | 94-1480 | 06/10/94 |
| Amcor Limited, Spicers Paper Limited, Worldwide Paper Factors, Inc | 94-1482 | 06/10/94 |
| MCI Communications Corporation, Digital Equipment Corporation, Digital Equipment Corporation | 94-1483 | 06/10/94 |
| Sisters of Christian Charity Health Care Corporation, North Central Pennsylvania Health System, North Central Pennsylvania Health System | 94-1493 | 06/10/94 |
| Exar Corporation, MPS Holdings, Inc., MPS Holdings, Inc | 94-1498 | 06/10/94 |
| Chas. Kurz & Co., Inc., General Electric Company, General Electric Credit and Leasing Corporation | 94-1510 | 06/10/94 |
| CSA Holdings Ltd., Integral Systems, Inc., Integral Systems, Inc | 94-1520 | 06/10/94 |

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 94-15628 Filed 6-27-94; 8:45 am]

BILLING CODE 7650-01-M

[Dkt. 9256]

### Columbia Hospital Corporation; Prohibited Trade Practices and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires the respondent to seek prior Commission approval, for ten years, before consummating any partial or total merger of a Columbia hospital in the Charlotte County area with any other acute-care hospital in that area, and also requires Columbia to give the Commission notice prior to completing a joint venture that satisfies specified criteria with any other acute-care hospital in the area.

**DATES:** Complaint issued February 18, 1993. Order issued May 5, 1994.[1]

**FOR FURTHER INFORMATION CONTACT:** Oscar Voss, FTC/S–3115, Washington, DC 20580. (202) 326–2750.

**SUPPLEMENTARY INFORMATION:** On Wednesday, February 23, 1994, there was published in the **Federal Register**, 59 FR 8635, a proposed consent agreement with analysis In the Matter of Columbia Hospital Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 94–15629 Filed 6–27–94; 8:45 am]

BILLING CODE 6750–01–M

## GENERAL SERVICES ADMINISTRATION

### Agency Information Collection Activities Under OMB Review; Notice

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0040, Application for Shipping Instructions and Notice of Availability. This collection is used for routing cargoes to shipping points as space becomes available.

**AGENCY:** Federal Supply Service, GSA.

**ADDRESSES:** Send comments to Edward Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets NW., Washington, DC 20405.

**ANNUAL REPORTING BURDEN:** 10,000 responses per year; 20 minutes per response; annual burden hours 3,333.

**FOR FURTHER INFORMATION CONTACT:** Michael Augeri, (703) 308–4380.

#### Copy of Proposal

A copy of this proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F Streets NW., Washington, DC 20405, or by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: June 21, 1994.

**Emily C. Karam,**

*Director, Information Management Division (CAI).*

[FR Doc. 94–15560 Filed 6–27–94; 8:45 am]

BILLING CODE 6820–24–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

[ATSDR–82]

### Quarterly Public Health Assessments Completed and Public Health Assessments To Be Conducted in Response to Requests From the Public

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice contains a list of sites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period January–March 1994. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL), and non-NPL sites for which ATSDR has prepared public health assessments in response to requests from the public (petitioned sites). During the period, no requests from the public to conduct a public health assessment were accepted by ATSDR.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

**SUPPLEMENTARY INFORMATION:** The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during October–December 1993, was published in the **Federal Register** on March 24, 1994, [59 FR 13966]. The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)], and appeared in the **Federal Register** on February 13, 1990, [55 FR 51136].

#### Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. There is a charge determined by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

#### Public Health Assessments or Addenda Completed or Issued

Between January 1, 1994 and March 31, 1994, public health assessments or addenda to public health assessments were issued for the sites listed below:

[1] Copies of the Complaint, the Decision and Order, and the statement of Commissioner Azcuenaga are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

**NPL Sites**

*Alabama*

Olin Corporation/McIntosh Plant—McIntosh—(PB94–154283)
Redwing Carriers Incorporated/Saraland—Saraland—(PB94–151891)

*California*

Del Amo Facility—Los Angeles—(PB94–139979)
GBF & Pittsburg Dumps—Antioch—(PB94–151156)
McClellan Air Force Base—Sacramento—(PB94–158201)
Stoker Company—Imperial—(PB94–139912)
TRW Microwave, Incorporated (Building 825)—(PB94–140050)

*Connecticut*

Laurel Park, Incorporated—Naugatuck—(PB94–140068)

*Florida*

Stauffer Chemical Company/Tampa—Tampa—(PB94–139813)

*Maryland*

Limestone Road Site—Cumberland—(PB94–139185)
Sand Gravel and Stone Site—Elkton—(PB94–157435)
Woodlawn Company Landfill—Woodlawn—(PB94–140092)

*Massachusetts*

Otis Air National Guard Base-Camp Edwards—Falmouth—(PB94–142262)

*Michigan*

Chem-Central—Grand Rapids—(PB94–139110)
Folkertsma Refuse—Grand Rapids—(PB94–154838)
Forest Waste Products—Otisville—(PB94–139888)
Grand Traverse Overall Supply Company—Greilickville—(PB94–142080)
Kentwood Landfill—Kentwood—(PB94–139128)
Motor Wheel—Lansing Township—(PB94–142965)
Tar Lake—Mancelona—(PB94–139706)
Verona Well Field—Battle Creek—(PB94–139896)
Wash King Laundry—Pleasant Plains Township—(PB94–139946)

*Minnesota*

Joslyn Manufacturing and Supply Company—Brooklyn Center—(PB94–145257)
Ritari Post and Pole—Sebeka—(PB94–142957)

*Missouri*

St. Louis Airport (Hazelwood Interim Storage/Futura Coatings Company)—St. Louis—(PB94–142098)

*New Hampshire*

Tibbetts Road—Barrington—(B94–151172)

*New Jersey*

Rockaway Borough Wellfield—Rockaway—(PB94–139144)
Waldick Aerospace Devices, Incorporated—Wall Township—(PB94–139870)

*New York*

Batavia Landfill—Batavia—(PB94–139169)
C & J Disposal Site—Hamilton—(PB94–139920)
Endicott Village Wellfield (a/k/a Ranny Well)—Endicott—(PB94–139060)
Facet Enterprises—Elmira—(PB94–156205)
Genzale Plating Company—Franklin Square—(PB94–156619)
Li Tungsten Corporation—Glen Cove—(PB94–142072)
Preferred Plating Corporation—Farmingdale—(PB94–156635)
Sarney Farm—Amenia—(PB94–150489)
Solvent Savers—Lincklaen—(PB94–161452)

*Pennsylvania*

Dublin Water Supply—Dublin—(PB94–158433)
Hebelka Auto Salvage Yard—Weisenburg Township—(PB94–140464)
Malvern TCE Site—Malvern—(PB94–139862)
Metropolitan Mirror and Glass Company Incorporated—Frackville—(PB94–139136)
North Penn-Area 1—Souderton—(PB94–139961)
Resin Disposal Site—Jefferson Borough—(PB94–140076)
Revere Chemical Company—Nockamixon—(PB94–140084)

*South Carolina*

Leonard Chemical Company Incorporated—Catawba—(PB94–150851)
SCRDI Dixiana—Cayce—(PB94–146560)

*Utah*

Richardson Flat Tailings—Park City—(PB94–154333)

*Virginia*

Atlantic Wood Industries Incorporated—Portsmouth—(PB94–151180)
First Piedmont Rock Quarry 719—Chatham—(PB94–154606)

*Washington*

FMC Corporation Yakima Pit—Yakima—(PB94–139987)
Spokane Junkyard—Spokane—(PB94–158508)
Wyckoff Company/Eagle Harbor, Eagle Harbor Operable Units—Bainbridge Island—(PB94–139755)

*Wisconsin*

City Disposal Corporation Landfill (a/k/a City Disposal; Sanitary Landfill)—Dunn Township—(PB94–154309)
Lemberger Landfill Incorporated (a/k/a Lemberger Flyash; Landfill)—Whitelaw—(PB94–151396)
Lemberger Transport and Recycling Landfill Incorporated—Franklin Township—(PB94–151347)
Master Dosposal Service Landfill—Brookfield—(PB94–146628)
Oconomowoc Electroplating Company, Incorporated—Ashippun—(PB94–151339)
Stoughton City Landfill—Stoughton—(PB94–139938)
Wheeler Pit—Janesville—(PB94–142403)
Waste Management of Wisconsin-Brookfield—Brookfield—(PB94–139078)

**Petitioned Sites (Non-NPL)**

*Michigan*

Allen Park Clay Mine—Allen Park—(PB94–156429)

*New Jersey*

E. I. Du Pont De Nemours—Pompton Lakes—(PB94–143385)

*Pennsylvania*

Falls Township Groundwater Contamination (a/k/a Corco Chemical, Parascientific, Meenan Oil)—Falls Township—(PB94–139177)

*West Virginia*

Shaffer Equipment Company—Minden—(PB94–151321)

Dated: June 22, 1994

**Claire V. Broome,**

*Acting Deputy Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 94–15593 Filed 6–27–94; 8:45 am]
BILLING CODE 4163–70–P

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## Centers for Disease Control and Prevention

### Idaho National Engineering Laboratory Environmental Dose Reconstruction Project: Public Meeting

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Idaho National Engineering Laboratory Environmental Dose Reconstruction Project.

Time and Date: 10 a.m.–3 p.m., July 13, 1994.

Place: Weston Plaza Hotel and Convention Center, 1350 North Blue Lakes Boulevard, Twin Falls, Idaho 83301.

Status: Open to the public for observation and comment, limited only by space available.

Purpose: Under a Memorandum of Understanding with the Department of Energy (DOE), the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

An initial step in an analytic epidemiologic study for persons living off site of a given DOE facility is the reconstruction of radiation doses due to releases from that facility. CDC has begun such an environmental dose reconstruction for DOE's Idaho National Engineering Laboratory near Idaho Falls, Idaho. A contractor, Sanford Cohen and Associate (SC&A), is gathering the data necessary to perform the dose reconstruction and to provide for logistics of public involvement in this project. The purpose of this public meeting is: SC&A will discuss project progress and responses to public concerns. Members of the public will be asked to provide individual input on technical issues and decisions faced by SC&A's project team.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Leeann Denham, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway NE., (F–35), Atlanta, Georgia, 30341–3724, telephone 404/488–7040.

Dated: June 21, 1994.

**William H. Gimson,**

*Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 94–15590 Filed 6–27–94; 8:45 am]

BILLING CODE 4163–18–M

## Food and Drug Administration

**[Docket No. 94N–0097]**

### Miles, Inc., et al.; Withdrawal of Approval of NADA's

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's). One NADA is held by Miles, Inc., and provides for use of febantel-trichlorfon paste as an equine anthelmintic and boticide. The other NADA is held by Nutra-Blend Corp. and provides for use of a tylosin concentrate to manufacture a Type A medicated article and Type B medicated feeds. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entries which reflect approval of the NADA's.

**EFFECTIVE DATE:** July 8, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0749.

**SUPPLEMENTARY INFORMATION:** Miles, Inc., Agriculture Division, Animal Health Products, P.O. Box 390, Shawnee Mission, KS 66201, is the sponsor of NADA 131–412 that provides for use of Combotel/Negabot-Plus (febantel-trichlorfon) Paste in horses as an anthelmintic and boticide. In a letter dated December 20, 1993, Miles, Inc., requested that FDA withdraw approval of NADA 131–412 because it no longer manufactures or distributes the product.

Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850, is the sponsor of NADA 122–158 that provides for the manufacture of Type B medicated feeds containing 4, 5, 10, and 20 grams per pound (g/lb) of tylosin and a Type A medicated article containing 40 g/lb of tylosin. Currently, Nutra-Blend Corp. is purchasing the 40-gram-per-pound article to manufacture the 10-gram-per-pound feed. Because this arrangement no longer requires that Nutra-Blend Corp. hold an approved NADA, the firm requested in its letter of December 15, 1993, that FDA withdraw approval of NADA 122–158.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 122–158 and 131–412, and all supplements and amendments thereto is hereby withdrawn, effective July 8, 1994.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.903c and amending 21 CFR 558.625 to reflect the withdrawal of approval of these NADA's.

Dated: June 15, 1994.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 94–15672 Filed 6–27–94; 8:45 am]

BILLING CODE 4160–01–F

**[Docket No. 92C–0347]**

### Biogeneral, Fiber Technology Group; Withdrawal of Color Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 0C0225) proposing that the color additive regulations be amended to provide for the safe use of 3-(5-chloro-2-benzoxazolyl)-7-(diethylamino)-2*H*-1-benzopyran-2-one (Color Index Solvent Yellow 160:1; CAS Reg. No. 35773–43–4) for coloring polymethylmethacrylate monofilament intended for use as supporting haptics for intraocular lenses.

**FOR FURTHER INFORMATION CONTACT:** Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of October 29, 1992 (57 FR 49090), FDA announced that a color additive petition (CAP 0C0225) had been filed by Biogeneral, Fiber Technology Group, 11055 Flintkote St., San Diego, CA 92121. The petition proposed to amend the color additive regulations to provide for the safe use of 3-(5-chloro-2-benzoxazolyl)-7-(diethylamino)-2*H*-1-benzopyran-2-one (Color Index Solvent Yellow 160:1; CAS Reg. No. 35773–43–4) for coloring polymethylmethacrylate monofilament intended for use as supporting haptics for intraocular lenses. Biogeneral, Fiber Technology Group has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6).

Dated: June 21, 1994.

**L. Robert Lake,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 94–15669 Filed 6–27–94; 8:45 am]

BILLING CODE 4160–01–F

**[Docket No. 94N–0136]**

### New Monographs and Revisions of Certain Food Chemicals Codex Monographs; Opportunity for Public Comment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an

opportunity for public comment on pending changes to certain Food Chemicals Codex monographs from the third edition and its four supplements and is also soliciting public review of specifications for proposed new monographs. For certain substances used as food ingredients, specifications consisting of new monographs and additions, revisions, and corrections to current monographs are being prepared by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex (the committee). This material will be presented in the next publication of the Food Chemicals Codex (fourth edition). Upon completion of the review of the comments by the committee, an announcement will be made in the **Federal Register** that copies of the new and revised monographs, as they will appear in the fourth edition of the Food Chemicals Codex, are available on request to NAS/IOM.

**DATES:** Submit written comments by August 29, 1994. The committee advises that comments received after this date cannot be considered for the next publication but will be considered for later supplements.

**ADDRESSES:** Submit written comments to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418.

**FOR FURTHER INFORMATION CONTACT:**
Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or
Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9537.

**SUPPLEMENTARY INFORMATION:** FDA provides research contracts to the NAS/IOM to support preparation of the Food Chemicals Codex, a compendium of specifications for substances used as food ingredients. Before the inclusion of any specifications in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or documentation to facilitate and expedite review by the committee.

In the **Federal Register** of January 4, 1994 (59 FR 307), FDA announced that the committee was considering new monographs and monograph revisions for inclusion in the fourth edition of the Food Chemicals Codex, which is now in preparation.

Notice and opportunity for public comment have also been given on policies adopted by the committee for the fourth edition. In the **Federal Register** of July 15, 1993 (58 FR 38129), FDA announced the committee's policy on lead and heavy metals. In the **Federal Register** of March 14, 1994 (59 FR 11789), FDA announced the committee's policy on arsenic specifications.

FDA now gives notice that the committee is soliciting comments and information on additional proposed new monographs and proposed changes to certain current monographs. These new monographs and changes will be published in the fourth edition of the Food Chemicals Codex. Copies of the proposed new monographs and revisions to current monographs may be obtained from NAS at the address listed above.

FDA emphasizes, however, that it will not consider adopting new monographs and monograph revisions until the public has had ample opportunity to comment on the changes and the new monographs. Such opportunity for public comment is announced in a notice published in the **Federal Register**.

The committee invites comments and suggestions of specifications by all interested parties on the proposed new monographs and revisions of current monographs, which follow:

**I. Proposed New Monographs**

Bentonite
Glyceryl tristearate

**II. Current Monographs to which the Committee Proposes to Make Revisions**

Ammonium bicarbonate (heavy metals, arsenic)
Ammonium carbonate (functional use in foods, arsenic)
β-Apo-8'-carotenal (arsenic, melting range)
Aspartame (identification, arsenic, assay, other related substances, 5-benzyl-3,6-dioxo-2-piperazineacetic acid)
Biotin (identification, arsenic)
Butadiene-styrene 50/50 rubber (description, arsenic, lithium, residual hexane)
Calcium gluconate (arsenic, sucrose and reducing sugars)
Calcium propionate (arsenic)
Canthaxanthin (arsenic, melting range)
Carnauba wax (arsenic, ester value, heavy metals)
Casein and caseinate salts (acid value, arsenic, heavy metals)
Glucono delta-lactone (arsenic, identification)
Polyvinylpyrrolidone (name change from PVP, arsenic, aldehydes, hydrazine, k-value, residue on ignition, loss on drying)
Potassium citrate (arsenic, rubric, loss on drying)
Propionic acid (arsenic, definition)
Sodium ascorbate (functional use in foods, arsenic, heavy metals, lead)

Two copies of written comments regarding the monographs listed in this notice are to be submitted to NAS (address above). Each submission should include the statement that it is in response to this **Federal Register** notice. NAS will forward a copy of each comment to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, to be placed under Docket No. 94N–0136 for public review.

Dated: June 21, 1994.

**L. Robert Lake,**

*Acting Director, Center for Food Safety and Applied Nutrition*

[FR Doc. 94–15668 Filed 6–27–94; 8:45 am]
BILLING CODE 4160–01–F

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**[Docket No. 94F–0189]**

## Miles, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Miles, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethyl dicarbonate (DMDC) as a yeast inhibitor in sports drinks and fruit or juice sparklers.

**DATES:** Written comments on the petitioner's environmental assessment by July 28, 1994.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4A4420) has been filed by

Miles, Inc., Mobay Rd., Pittsburgh, PA 15205–9741. The petition proposes to amend the food additive regulations in § 172.133 *Dimethyl dicarbonate* (21 CFR 172.133) to provide for the safe use of DMDC as a yeast inhibitor in sports drinks and fruit or juice sparklers.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 28, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 16, 1994.

**Janice F. Oliver,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 94–15670 Filed 6–27–94; 8:45 am]

BILLING CODE 4160–01–F

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**[Docket No. 86D–0334]**

## Estrogen Drug Product Labeling; Labeling Guidance Texts; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of informal labeling guidance texts for professional and patient labeling for estrogen drug products that were last revised in 1992. The texts provide information to assist manufacturers and other persons in preparing supplemental applications to meet labeling requirements. The revisions reflect updated scientific information.

**DATES:** Written comments on the labeling may be submitted at any time.

**ADDRESSES:** Submit written requests for a copy of the labeling guidance texts to Philip A. Corfman, Division of Metabolism and Endocrine Drug Products (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the labeling guidance texts to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The labeling guidance texts and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Wolf, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of the 1992 revised informal labeling guidance texts for professional and patient labeling for estrogen drug products. The 1992 revisions reflect updated scientific information, particularly pertaining to the relationship between estrogen replacement therapy and reduction of cardiovascular risk. Although, the agency has distributed copies of the 1992 labeling guidance on a case-by-case basis, it is announcing its availability now to ensure more widespread distribution.

Under 21 CFR 314.70(c), a holder of an approved application for a new drug is required to submit a supplemental application to obtain approval for the following changes, among others, in the text of professional or patient labeling: to add or strengthen contraindications, warnings, precautions, or adverse reactions, or to add or strengthen dosage and administration instructions to increase the safe use of the product. Manufacturers and other persons can refer to the labeling guidance texts for assistance in preparing supplemental applications to meet the labeling requirements of 21 CFR 310.515 for estrogen drug products and 21 CFR 201.56, 201.57, and 201.100 for professional labeling of prescription drug products.

In the **Federal Register** of May 4, 1990 (55 FR 18761), the agency announced the revocation of guideline texts of professional and patient labeling for estrogen drug products. The agency determined that the time period to finalize and announce revised guidelines prevented the agency from providing the most current medical information to manufacturers and others. Therefore, in place of guidelines, the agency announced that it would provide assistance in meeting labeling requirements in the form of informal labeling guidance texts.

Labeling guidance texts are informal documents. They do not bind or otherwise obligate the agency or a person referring to them and are not formal agency opinions. The agency does not require manufacturers printing professional and patient package inserts to follow the labeling guidance texts. Manufacturers and others are free to use an alternative or modified approach, although they are encouraged to consult with the Division of Metabolism and Endocrine Drug Products (address above) before drafting alternative labeling so that any differences can be resolved prior to the submission of a supplemental application, if such an application is required under 21 CFR 314.70.

Interested persons may submit written comments concerning the informal labeling guidance texts to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 21, 1994.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 94–15605 Filed 6–27–94; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–030–4210–05; NVN 58678]**

## Notice of Realty Action; Recreation and Public Purposes Act Classification; Carson City, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following described land, comprising 1.93 acres, has been examined and is determined to be suitable for classification for lease or conveyance pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*):

**Mt. Diablo Meridian, Nevada**

T. 15 N., R. 20 E.
Sec. 8, S1/2N1/2SW1/4SE¼ (portion of).
Containing 1.93 acres.

The parcel's metes and bounds description has been field surveyed and is tentatively identified as Lot 2 pending approval of the survey.

**SUPPLEMENTARY INFORMATION:** The public land is located within Carson City. The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. Carson City has expressed an interest in constructing a health care facility on the site.

The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior, and the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals deposits in the land so patented and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

And will be subject to:

1. Those rights for telephone line purposes granted to Nevada Bell, its successors or assigns, by right-of-way No. N 41239, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

2. Those rights for road purposes granted to Carson City, its successors or assigns, by right-of-way No. N 46427, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for sewer line purposes granted to Carson City, its successors or assigns, by right-of-way No. N 51244, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws but not the mineral leasing laws, the material disposal laws, or the Geothermal Steam Act. The segregation shall terminate upon issuance of a conveyance document or publication in the **Federal Register** of an order specifying the date and time of opening.

**DATES:** For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments.

**ADDRESSES:** Written comments should be sent to: Walker Resource Area Manager, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City NV 89706–0638. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Kihm, Walker Area Realty Specialist, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706–0638; (702) 885–6000.

Dated: June 16 1994.

**John Matthiessen,**

*Walker Resource Area Manager.*

[FR Doc. 94–15552 Filed 6–27–94; 8:45 am]

BILLING CODE 4310–HC–M

## Fish and Wildlife Service

### Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development in Brevard County, FL.

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** O.C. Mendes, owner of Balmoral Subdivision (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 2 years, the incidental take of a threatened species, the Florida scrub jay, *Aphelocoma coerulescens coerulescens*, incidental to construction of Balmoral subdivision, a development consisting of 5 single family residences and necessary infrastructure on approximately 4.05 acres (Project). The Project is located along State Road A1A south of the city of Melbourne, in the Coconut Point area of Brevard County, Florida.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

**DATES:** Written comments on the permit application, EA and HCP should be received on or before July 28, 1994.

**ADDRESSES:** Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–791244 in such comments.

Assistant Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912 (telephone 904/232–2580, fax 904/232–2404).

**FOR FURTHER INFORMATION CONTACT:** Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

**SUPPLEMENTARY INFORMATION:** *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the scrub jay population has been reduced by at least half in the last 100 years.

The scrub jay survey provided by the Applicant indicates that one family currently uses the site and surrounding suitable habitat areas. The Applicant

proposes to impact a portion of the territory of this family. Initial construction of roads and utilities and subsequent development of individual homesites may therefore result in death of, or injury to, scrub jays incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development may reduce the availability of feeding, shelter, and nesting habitat.

To minimize and mitigate the impacts of the loss of 1.35 acres of scrub jay habitat, the Applicant will purchase 3.0 acres of scrub habitat known to support the scrub jay, deed the property to Brevard County, and provide a management endowment of $3,000 to ensure management of the site in perpetuity. Other measures proposed by the Applicant include siting of individual building footprints to minimize additional scrub habitat alteration, and protection of active nests, if discovered, during the nesting season.

The EA considers the environmental consequences of three alternatives, including acceptance of the HCP as submitted, consideration of management of surrounding publicly-owned lands as mitigation in lieu of offsite purchase, and no action.

Dated: June 21, 1994.

**James W. Pulliam, Jr.,**

*Regional Director.*

[FR Doc. 94–15589 Filed 6–27–94; 8:45 am]

BILLING CODE 4310–55–P

## Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development in Brevard County, FL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Brandon Capital Corporation (Applicant) is seeking an incidental take permit from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 2 years, the incidental take of a threatened species, the Florida scrub jay, *Aphelocoma coerulescens coerulescens*, incidental to construction of the Villages of Tramore, consisting of 20 patio homes and associated infrastructure on 3.78 acres (Project). The Project is located along State Road A1A south of the city of Melbourne, in the Coconut Point area of Brevard County, Florida.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

**DATES:** Written comments on the permit application, EA, and HCP should be received on or before July 28, 1994.

**ADDRESSES:** Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–791241 in such comments.

Assistant Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912 (telephone 904/232–2580, fax 904/232–2404).

**FOR FURTHER INFORMATION CONTACT:** Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

**SUPPLEMENTARY INFORMATION:** *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the scrub jay population has been reduced by at least half in the last 100 years.

The scrub jay survey provided by the Applicant indicates that one family currently uses the site and surrounding suitable habitat areas. The Applicant proposes to impact a portion of this family's territory. Initial construction of roads and utilities and subsequent development of individual homesites may therefore result in death of, or injury to, scrub jays incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development may reduce the availability of feeding, shelter, and nesting habitat.

To minimize and mitigate the impacts of the loss of 3.78 acres of scrub jay habitat, the Applicant will purchase 7.0 acres of scrub habitat known to support the scrub jay, deed the property to Brevard County, and provide a management endowment of $7,500 to ensure management of the site in perpetuity. Other measures proposed by the Applicant include siting of individual building footprints to minimize additional scrub habitat alteration, and protection of active nests, if discovered, during the nesting season.

The EA considers the environmental consequences of three alternatives, including acceptance of the HCP as submitted, consideration of management of surrounding publicly-owned lands as mitigation in lieu of offsite purchase, and no action.

Dated: June 20, 1994.

**James W. Pulliam, Jr.,**

*Regional Director.*

[FR Doc. 94–15594 Filed 6–27–94; 8:45 am]

BILLING CODE 4310–55–P

## National Park Service

## Burro Management Plan, Lake Mead National Recreation Area; Notice of Availability of Draft Environmental Impact Statement

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–90 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed Burro Management Plan for Lake Mead National Recreation Area (NRA), Mohave County, Arizona, and Clark County, Nevada. Once approved, the plan will guide the management of burros within the NRA over the next several years.

The proposed action, designated in the DEIS as *Alternative B: Resource Based Management*, would establish burro-free areas within designated areas of the NRA and accommodate a certain amount of burro use in other areas. Burro use would not be permitted to expand to new areas and the animals would be removed from areas where they pose a resource threat or public safety hazard.

Four alternatives are evaluated in the DEIS, including *No Action/Status Quo, No Management of Burros, Managing a Population of Burros for Perpetuity, and Total Removal of All Burros.*

**SUPPLEMENTARY INFORMATION:** Written comments on the draft burro management plan and DEIS should be directed to the Superintendent, Lake Mead NRA, 601 Nevada Highway, Boulder City, NV 89005. Comments will be accepted until August 31, 1994.

Inquiries on the draft burro management plan and DEIS and requests for copies of the draft plan should be directed to Lake Mead NRA at the address given above, or by telephone at (702) 293–8949. Copies of the plan will be available for public inspection at the NRA and at area libraries.

Dated: June 9, 1994.

**Patricia L. Neubacher**

*Acting Regional Director, Western Region.*

[FR Doc. 94–15549 Filed 6–27–94; 8:45 am]

BILLING CODE 4310–70–P

## Wrangell-St. Elias National Park and Preserve, AK; Notice

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 *et seq.*, and in accordance with the provisions of section 9.17 of title 36, Code of Federal Regulations, part 9 subpart A, Mark Fales has filed a supplemental plan of operations in support of proposed mining operations on lands embracing the Big Eldorado Creek Tony No. 1, Rocky No. 1, and Ole No. 1 through No. 5, placer claims within the Wrangell-St. Elias National Preserve.

**ADDRESSES:** This supplement to the existing plan of operations is available for inspection during normal business hours at the following location: Alaska Regional Office—Minerals Management Division, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503–2892.

**FOR FURTHER INFORMATION CONTACT:** Floyd Sharrock of the National Park Service, Minerals Management Division, at the address given above; telephone (907) 257–2636.

**John M. Morehead,**

*Regional Director.*

[FR Doc. 94–15546 Filed 6–27–94; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL BOUNDARY AND WATER COMMISSION

### Finding of No Significant Impact; Notice

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico.

**ACTION:** Notice of Finding of No Significant Impact.

**SUMMARY:** Based on an environmental assessment prepared by Quisto Energy Corporation (Quisto) to construct, operate, and maintain a gas well located on the Main Floodway of the Lower Rio Grande Flood Control Project (LRGFCP), the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC) finds that the proposed action to issue a license to Quisto for such works is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094); the USIBWC hereby gives notice that an environmental impact statement will not be prepared for the proposed action.

**ADDRESSES:** Dr. Conrad G. Keyes, Jr., Principal Engineer, Planning, International Boundary and Water Commission, United States and Mexico, United States Section, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441. Telephone: 915/534–6703.

**SUPPLEMENTARY INFORMATION:**

**Proposed Action**

The action proposed is for the USIBWC to issue a license to Quisto to construct, operate, and maintain a gas well and install related features within Meyerhoff No. 3 Drilling Unit, Lot 271, Kelly-Pharr Subdivision, Hidalgo County, Texas. The gas well is proposed to be located on privately owned land within the Main Floodway of the USIBWC LRGFCP approximately 8 kilometers (5 miles) southeast of the town of Pharr. Access to the drilling site is by way of existing county and private roads.

**Alternatives Considered**

Three alternatives were considered in the Environmental Assessment (EA):

The Proposed Action Alternative is for Quisto to construct, operate, and maintain a gas well in a cultivated field within the Main Floodway of the USIBWC LRGFCP. This proposed action will require the USIBWC to issue a license to ensure that such works do not cause an obstruction to flood flows within the floodway or interfere with the operation and maintenance of the LRGFCP.

The No Action Alternative is for Quisto to not construct, operate, and maintain a gas well within the Main Floodway of the LRGFCP. The no action alternative will not require the USIBWC to issue a license since no work will be done within the LRGFCP. The no action alternative will result in the denial of access to the mineral owner to rightfully owned minerals, loss of tax revenues to the State of Texas, and result in an unrecoverable clean energy source.

The Directional Well Alternative is for Quisto to drill a well from outside the Main Floodway to a depth below the proposed surface location. The directional well alternative will not require the USIBWC to issue a license since no work will be done within the LRGFCP. The directional well alternative is considered not workable because of a lack of an available surface drillsite outside the Main Floodway and technical problems associated with a bottomhole location some 610 meters (2,000 feet) or more from the surface location.

**Environmental Assessment**

The USIBWC received on June 3, 1994, from Quisto a completed Environmental Assessment (EA) for the proposed gas well and related features. The EA is currently available for review and comment.

**Finding of the Environmental Assessment**

The EA finds that the proposed action for Quisto to construct, operate, and maintain a gas well within the Main Floodway of the USIBWC LRGRCP (and the USIBWC to issue a license for such work) does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. The United States Army Corps of Engineers has determined that no waters of the United States including wetlands will be impacted by the proposed gas well and related features.

2. The United States Fish and Wildlife Service has determined that federally listed endangered or threatened species are unlikely to be adversely affected by the proposed gas well and related features.

3. The Texas Historical Commission and Department of Antiquities Protection have determined that no survey is required and the project may proceed.

4. The USIBWC Water Resources Investigations Division has determined that the proposed gas well and related features will have no significant effect upon the flood carrying capacity of the Main Floodway.

On the basis of the Quisto EA, the USIBWC has determined that an environmental impact statement is not required for the issuance of a license to Quisto to construct, operate, and maintain a gas well and install related features within the Main Floodway of the USIBWC LRGFCP and hereby provides notice of finding of no significant impact (FONSI). An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice. A limited number of copies of the EA and FONSI are available to fill single copy requests at the above address.

Dated: June 17, 1994.

**Suzette Zaboroski,**

*Staff Counsel.*

[FR Doc. 94–15558 Filed 6–27–94; 8:45 am]

BILLING CODE 4710–03–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32505]**

### Soo Line Railroad Company—Acquisition of Trackage Rights—Chicago and North Western Transportation Company

Chicago and North Western Railway Company [1] (CNW) and Soo Line Railroad Company (Soo) d/b/a CP Rail System (CPRS) have agreed to supplement their existing trackage rights agreement.[2] The basic agreement granted Soo bridge rights to operate over CNW's line of railway between MP 4.18 at St. Paul (Cliff), MN, and MP 29.00 at Shakopee, MN, a distance of 24.82 miles. The supplemental agreement grants Soo the right of ingress and egress to Savage, MN, over CNW's trackage for the purpose of access to industries located there.[3] The trackage rights were to become effective on or after June 2, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Larry D. Starns, Esq., General Attorney, Soo Line Railroad Company, 1000 Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: June 21, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–15645 Filed 6–27–94; 8:45 am]

BILLING CODE 7035–01–P

**[Finance Docket No. 32516]**

### Wheeling & Lake Erie Railway Company—Lease and Operation Exemption—Norfolk and Western Railway Company's Dock at Huron, OH

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 Wheeling and Lake Erie Railway Company's lease and operation of Norfolk and Western Railway Company's dock and related tracks at Huron, Erie County, OH (Dock). The Dock area totals about 27.6 acres of land and is ringed by a loop track 5,142 feet long. There are also approximately 2 miles of yard and support tracks in the Dock area. The Dock will be used to transload pelletized iron ore from Great Lakes boats to storage piles or railcars on the Dock. We will grant the exemption subject to standard labor protective conditions.

**DATES:** This exemption is effective on July 5, 1994. Petitions to stay or reopen must be filed by July 5, 1994.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 32516, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioners' representatives: (a) Robert J. Cooney, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, VA 23510, and (b) William A. Callison, Wheeling & Lake Eire Railway Company, 100 East First Street, Brewster, OH 44613.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: June 20, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–15644 Filed 6–27–94; 8:45 am]

BILLING CODE 7035–01–P

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

[1] Effective May 6, 1994, the Chicago and North Western Transportation Company changed its name to the "Chicago and North Western Railway Company."

[2] The basic trackage rights were acquired by Soo under a Notice of Exemption in *Soo Line Railroad Company and Chicago and North Western Transportation Company—Joint Relocation Project Exemption*, Finance Docket No. 31775 (ICC served Dec. 14, 1990). A Corrected Notice of Exemption was served on December 27, 1990, to reflect the proper citation for the labor conditions that were imposed.

[3] The supplemental agreement mentions possible construction of a connecting track between the Joint Trackage and CPRS's trackage. Any new rail construction may require Commission approval.

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

*Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.*

(1) National Crime Victimization Survey

(2) NCVS–1(X), NCVS–1A(X), NCVS–2(X), NCVS–500(X), NCVS–7(X), NCVS–110, NCVS–572(L), NCVS–573(L), NCVS–593(L), NCVS–594(L), NCVS–541(X)/542(X), NCVS–543(X), NCVS–1(X)SP, NCVS–2(X)SP, NCVS–551, NCVS–544(X), NCVS–554(X)SP, NCVS–572(L)KOR/SP/CHIN(T)/CHIN(M)/VIET. Bureau of Justice Statistics.

(3) Semi-annually.

(4) Individuals or households. The National Crime Victimization Survey collects, analyzes, publishes and disseminates statistics on the amount and type of crime committed against households and individuals in the United States. Respondents include persons 12 years or older living in 60,000 households in 312 primary sampling units.

(5) 262,665 annual respondents at 1.95 hours per response.

(6) 87,992 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 22, 1994.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 94–15659 Filed 6–27–94; 8:45 am]

BILLING CODE 4410–18–M

## Drug Enforcement Administration

### Importer of Controlled Substances; Registration

By notice dated March 21, 1994, and published in the **Federal Register** on April 1, 1994, (59 FR 15459), Stepan Chemical Company Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Coca Leaves (9040) | II |
| Cocaine (9041) | II |
| Benzoylecgonine (9180) | II |

Comments were received, however, no written request for a hearing was received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: May 16, 1994.

**Gene R. Haislip,**

*Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.*

[FR Doc. 94–15547 Filed 6–27–94; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–29,546]

### Apache International Division of Apache Corporation Houston, TX; Negative Determination Regarding Application for Reconsideration

By an application dated May 26, 1994, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 18, 1994 and published in the **Federal Register** on June 1, 1994 (59 FR 28428).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact that Apache Corporation, the parent company, acquired another company resulting in some of Apache International's responsibilities being transferred to the parent company's new subsidiary. Also, the decreased sales or production requirement of the Group Eligibility Requirements of the Trade Act was not met. Corporate-wide sales of crude oil and natural gas at Apache International increased in 1993 compared to 1992.

The petitioner states that Apache purchased another company (Hadson Energy in Perth, Australia) in 1993 and had it not been for the addition of Hadson's sales, the workers would have met the decreased sales criterion. The petitioner also states that jobs were shifted offshore.

The findings show that Apache International has no domestic operations but is responsible for a portion of Apache Corporation's exploration and production outside of the United States. The remaining portion of the company's international operations are performed by the newly acquired firm—Hadson Energy Limited, headquartered in Perth, Australia. Following the Hadson acquisition, some of Apache International's responsibilities were transferred to

Hadson Energy causing some worker separations in the United States.

Other findings show that Apache International's operation is for the export market and as such would not form a basis for a worker group certification. U.S. imports of crude oil would not affect Apache's sales in a foreign market.

Also, the elimination of domestic jobs because of corporate changes in the export market would not provide a basis for a worker group certification.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. According, the application is denied.

Signed at Washington, DC, this June 15, 1994.

**James D. Van Erden,**

*Administrator, Office of Work-Based Learning.*

[FR Doc. 94–15661 Filed 6–27–94; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–29,299]**

### Control Techniques (USA) Inc. (E.C.S.) Fairmont, WV; Negative Determination Regarding Application for Reconsideration

By an application dated April 18, 1994, Local t702 of the International Union of Electrical Workers (IUE) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 23, 1994 and published in the **Federal Register** on April 7, 1994 (59 FR 16663).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produced electronic control equipment. The subject firm was known as Electronic Control Systems, Inc., (ECS) until it was purchased by Control Techniques Worldwide, a British firm, on February 14, 1991.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. After the purchase in February 1991, Control Techniques Worldwide, the parent company, began to consolidate all of Fairmont's production to other domestic locations. The major portion of layoffs occurred in 1991. Layoffs prior to November 16, 1992 cannot be considered under this petition since Section 223(b)(1) of the Trade Act does not permit the certification of workers prior to one year of the date of the petition.

The union states that components and instruments from the U.K. replaced products produced at Fairmont. The union also states that parts originally made at ECS began to be prefabricated in Mexico.

Investigation findings show that no production at Fairmont was displaced by foreign production since Control Techniques Worldwide purchased ECS in 1991. Some SCR power paks, however, were brought over from the U.K. but they were not sold. The power paks from the U.K. were found to be inadequate for the U.S. market and were returned.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this June 15, 1994.

**James D. Van Erden,**

*Administrator, Office of Work-Based Learning.*

[FR Doc. 94–15660 Filed 6–27–94; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–29, 802]**

### Western Geophysical Company a/k/a Halliburton Company, Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 31, 1994. The notice will soon be published in the **Federal Register.**

At the request of some of the workers and the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Western Geophysical Company purchased the Geophysical Services Division of the Halliburton Company in January 1994 whose workers were certified for TAA under an earlier certification, TA–W–27, 776. As a result, some of the former Halliburton workers laid off from Western Geophysical do not have the required 26 weeks to meet their personal eligibility requirement. Accordingly, the Department is amending the subject certification to show that Western Geophysical is a successor-in-interest firm to Halliburton Geophysical Services.

The amendment notice applicable to TA–W–29, 802 is hereby issued as follows:

"All workers of Western Geophysical Company, Houston, Texas, the successor-in-interest firm to Halliburton Geophysical Services, Houston, Texas, engaged in seismic activities related to oil and gas exploration who became totally or partially separated from employment on or after April 25, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 15th day of June 1994.

**Violet L. Thompson,**

*Deputy Director, Office of Trade Adjustment Assistance.*

[FR Doc. 94–15662 Filed 6–27–94; 8:45am]

BILLING CODE 4510–30–M

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### Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103–182) are eligible

to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than July 8, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than July 8, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL. Room C–4318, 200 Constitution Avenue, N.W., Washington, DC 20210.

Signed at Washington, DC, this 15th day of June 1994.

**Violet Thompson,**

*Deputy Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received at governor's office | Petition No. | Articles produced |
|---|---|---|---|---|
| Zurn Industries; Energy Division (USWA) | Erie, PA | 05/27/94 | NAFTA–00127 | Boiler components. |
| Washington Energy Resources Corp.; Washington Energy Exploration, Inc. (Wkrs). | Seattle, WA | 05/27/94 | NAFTA–00128 | Oil and natural gas exploration and production. |
| Crown Pacific Inland Lumber; Superior ( ) | Superior, MT | 06/06/94 | NAFTA–00129 | Production of lumber. |
| Environgas, Inc. (Co.) | Hamburg, NY | 06/07/94 | NAFTA–00130 | Natural gas. |
| August L. Nielson Co., Inc. (Wkrs) | Allentown, PA | 06/07/94 | NAFTA–00131 | Men's and boy's pajamas. |
| F.C.I.; F.C.I. (Co.) | Freeman, SD | 06/10/94 | NAFTA–00132 | Orthopedic back supports. |
| Joseph H. Hill Company (Co.) | Richmond, IN | 06/08/94 | NAFTA–00133 | Rose production (cut roses). |
| Aircraft & Electronic Specialities, Inc.; (d/b/a AFS Interconnects) (Co.). | Indianapolis, IN | 06/08/94 | NAFTA–00134 | Electronic wire harnesses and cable assemblies. |
| Twin Cities Tire & Retread (Wkrs) | El Paso, TX | 06/09/94 | NAFTA–00135 | Recaping and retreading tires. |
| Farrah Manufacturing Company; Pressing (Wkrs). | El Paso, TX | 06/09/94 | NAFTA–00136 | Men's pants, shirts and coats. |
| The Greif Companies; Division of Genesco, Inc. (ACTWU). | Verona, VA | 06/09/94 | NAFTA–00137 | Suits, sports coats. |
| First Inertia Switch (Wkrs) | Grand Blanc, MI | 06/10/94 | NAFTA–00138 | Vertical accelerometer. Produced for GM. |
| PACER Ind; ECHLIN (IAM) | Washington, MO | 06/02/94 | NAFTA–00139 | Fuel system related parts for automobile aftermarket. |
| Moore Business Forms & Systems Division; Cut Product Group (Wkrs). | Buckhannon, WV | 06/13/94 | NAFTA–00140 | Business forms. |
| Thomas & Betts Corporation; Electronics Division (Co.). | Inman, SC | 06/13/94 | NAFTA–00141 | Injection molding and assembly of electronic connectors for computer and office equipment application. |
| Avery Dennison; Soabar Systems Division (Wkrs). | Gastonia, NC | 06/13/94 | NAFTA–00142 | Gravure printing, tickets, labels and tags customized to customer's needs. |
| Byran's Gordon County Farm Co.; Sara Lee Corporation (Wkrs). | Calhoun, GA | 06/14/94 | NAFTA–00143 | Prepared meats such as luncheon meats (bologna, ham, turkey, salami, hot dogs, and corn dogs). |
| USA Classic, Inc. (Wkrs) | Counce, TN | 06/14/94 | NAFTA–00144 | Clothing. |

[FR Doc. 94–15663 Filed 6–27–94; 8:45 am]

BILLING CODE 4510–30–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 94–042]**

### NASA Advisory Council; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

**DATES:** July 14, 1994, 9 a.m. to 5 p.m.; and July 15, 1994, 1 p.m. to 3 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Program Review Center, Ninth Floor, room 9H40, 300 E Street SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne L. Accola, Code IB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0682.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Synopsis of recent events and review of strategic implementation plan
—Update on International Space Station Program
—Review of recommendations of the Advisory Committee on the Future of the U.S. Space Program. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 21, 1994.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer.*

[FR Doc. 94–15592 Filed 6–27–94; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and records Administration (NARA) publishes notice at lest once monthly of certain Federal Agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Request for copies must be received in writing on or before August 12, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESSES:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–94–7). Copies of contingency reports relating to deployment.

2. Department of the Army (N1–AU–93–9). Background material used in preparation of health hazard assessment reports which are scheduled for permanent retention.

3. Defense Logistics Agency (N1–361–94–2). Records relating to hazardous materials distribution.

4. United States Department of Education, Office of General Counsel (N1–441–93–4). Background records to regulations published in the **Federal Register**.

5. Department of Energy (N1–434–93–4). Records relating to the internal administration and operation of the ADP function.

6. Department of Justice, Civil Division (N1–60–93–12). Judgment record docket cards, 1960–88.

7. Department of State, Bureau of Administration (N1–59–94–17). Decrease in retention period for property management records (deviation from GRS).

8. Department of Transportation, Federal Aviation Administration (N1–237–92–5). Selected textual input to the automated Enforcement Information System relating to civil aviation security.

9. National Archives and Records Administration (N2–234–93–1). Internal disposal of miscellaneous procurement records of the Rubber Reserve Company and the Metal Reserve Company.

10. Office of the Secretary of Defense (N1–330–94–1). Office of the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS) Medical Care Grievance Case Files.

Dated: May 27, 1994.

**Trudy Huskamp Peterson,**

*Acting Archivist of the United States.*

[FR Doc. 94–15566 Filed 6–27–94; 8:45 am]

BILLING CODE 7515–01–M

## NATIONAL ENDOWMENT ON THE ARTS AND HUMANITIES

### National Endowment for the Arts

### Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–643), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Advancement Overview Section) to the National Council on the Arts will be held on July 19, 1994 from 10 a.m. to 4 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis for a general policy discussion and review of proposed FY 96/97 guidelines.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meetings.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5439.

Dated: June 1, 1994.

**Yvonne M. Sabine,**

*Director Office of Panel Operations National Endowment for the Arts.*

[FR Doc. 94–15559 Filed 6–27–94; 8:45 am]

BILLING CODE 7537–01–M

## NATIONAL SCIENCE FOUNDATION

### Investigator Financial Disclosure Policy

**AGENCY:** National Science Foundation.

**ACTION:** Notice of changes to award conditions and proposal content.

**SUMMARY:** The National Science Foundation (NSF) is issuing revised award conditions and revised requirements for proposal submission in order to require that institutions maintain written and enforced policies on investigator conflicts of interest.

**EFFECTIVE DATE:** June 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Miriam Leder, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230, (703)306–1060.

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Control Number 3145–0149**

NSF favors and has actively encouraged increased involvement of academic researchers and educators with industry and with private entrepreneurial ventures. However, such involvements create an increased risk of conflict between the private interests of individuals, or of the companies with which they are involved, and the public interest that NSF funding should serve. These risks have aroused concern in the scientific and engineering communities, in the public media, in Congress, and at NSF.

In response to this concern, NSF developed a proposed Investigator Financial Disclosure Policy requiring financial disclosure by investigators and professional employees at grantee institutions who are involved in NSF-funded research and educational activities. On July 16, 1992, NSF published its proposed Policy in the **Federal Register**, and invited public comment. 57 FR 31540 (July 16, 1992). NSF received seventy-two written comments from universities, research institutions and various associations. The primary issues raised by commenters, and NSF's responses, are described below.

**Comments**

**Uniform Federal Policy**

Most commenters recommended either that the Federal Government adopt a uniform, government-wide investigator conflicts policy with a single point of contact for conflict of interest and financial disclosure issues, or that NSF coordinate with other agencies to ensure that agency policies are consistent.

NSF agrees that a uniform, government-wide approach to the conflicts issue is advisable—it would eliminate the possibility of inconsistent agency policies, and reduce the bureaucratic burdens associated with compliance with different conflicts policies. NSF has been working closely with the Department of Health and Human Services (HHS) to ensure that this Policy and the proposed rule issued by HHS in this edition of the **Federal Register** will be consistent, and will impose the same obligations on grantees. In addition, NSF has been working with the Office of Science and Technology Policy, the Office of Management and Budget, HHS and other interested agencies to develop and propose a common Federal policy on investigator conflicts of interest. It is expected that this policy, when completed, will ensure consistent treatment of investigator conflicts issues at all Federal funding agencies.

**Financial Disclosure to NSF**

The proposed Investigator Financial Disclosure Policy required grant applicants to disclose to NSF the significant financial ties their investigators have with parties whose financial interests might be affected by the work to be funded. It also required applicants to describe the measures, if any, that would be taken to minimize the risks associated with actual or potential conflicts of interest.

Most commenters felt that universities and research institutions, and not NSF, should have primary responsibility for collecting and reviewing investigator financial information, and for managing conflicts. They objected to the requirement that each grant proposal be accompanied by financial disclosures, and offered a variety of reasons for doing so. These included privacy concerns; a belief that NSF's review of financial disclosures would be inconsistent with an emphasis on institutional responsibility; a belief that the requirement imposed an unjustified paperwork and staff burden on institutions; and a concern that this disclosure requirement could have a chilling effect on university-industry collaborations and on the submission of grant proposals.

As an alternative, some commenters suggested that NSF require institutional certifications that appropriate policies and procedures had been implemented, and that actual or potential conflicts were resolved to the satisfaction of the institution. NSF could then conduct periodic reviews of grantee financial disclosure/conflict of interest records to assure itself that institutions had complied with NSF's minimum requirements. Some commenters also suggested that financial disclosure to NSF would be appropriate if institutions are unable to satisfactorily resolve conflicts issues that they identify.

NSF recognizes the fact that many institutions and investigators are concerned about the possible ramifications of providing financial information to NSF. While NSF does not necessarily agree with all of the conclusions reached by those institutions and investigators, the final Policy has been revised so that disclosure to NSF is not required unless institutions find that they are unable to satisfactorily resolve a conflict issue. Instead, NSF's final Policy requires an institutional representative to certify with each grant proposal that the required conflict of interest policy has been implemented; that, to the best of his or her knowledge, all required financial disclosures were made; and that there are no actual or potential conflicts of interest, or, if such conflicts exist, they were, or prior to funding of the award, they will be managed in a manner satisfactory to the institution or disclosed to NSF. Individual investigators also must certify that each has read and understood the institution's conflict of interest policy; to the best of his/her knowledge, all financial disclosures required by the institution's policy were made; and he/she will comply with any conditions or restrictions imposed by the institution to manage actual or potential conflicts of interest.

The final Policy also requires that institutions maintain records of financial disclosures, and records relating to the management of actual and potential conflicts of interest, until three years after the later of the termination or completion of the award to which they relate, or the resolution of any government action involving the records. NSF may undertake periodic reviews of the records in order to assess the reliability of institutional and investigator certifications, and to determine whether institutional safeguards do, in fact, protect the integrity of NSF-funded research. In undertaking any such reviews, NSF will coordinate with HHS, to the extent feasible, to ensure that institutions are not unnecessarily subjected to multi-agency reviews.

**Timing of Disclosure**

Several commenters questioned the proposed Policy's timing for required financial disclosures. Seven believed the required certifications and/or disclosures should be made at the time of an award, not when the proposal is submitted, and one suggested that institutional review take place within 90 days of submission of the grant proposal to NSF. Two commenters believed the proposed Policy required grantee institutions to collect financial disclosures on a periodic basis, and also prior to the submission of each grant proposal. These commenters felt the two requirements might be inconsistent.

In order to provide the required certifications, institutions will have to collect all required disclosures and resolve actual or potential conflicts

prior to the time an award is funded. In addition, the final Policy requires that, during the pendency of any NSF award, institutions either solicit financial disclosures on an annual basis or require updates as investigators obtain new reportable financial interests.

**Overly General and/or Ambiguous Terms**

Some commenters were troubled by the proposed Policy's lack of definitions for various terms, including "entrepreneurial venture", "significant financial ties", "significant conflict of interest", "routine small holdings", "direct relevance", "directly and significantly", "immediate family", "close business associate", "adequate enforcement mechanisms", "professional employee" and "relevant consulting arrangements".

These terms were left undefined in the proposed Policy so that institutions would be able to tailor definitions and conflicts policies to the particular conditions existing on their campuses. This remains NSF's basic philosophy, but the final Policy provides more guidance on the types of financial interests that must be disclosed, the types that need not be disclosed, and the individuals who must make financial disclosures.

*Contents of Institutional Conflict of Interest Policies*

A few commenters believe institutions should establish conflict of interest policies, but that NSF should not prescribe the details of those policies. Three suggested that NSF establish "outcome" or "performance" criteria for institutional disclosure policies, rather than requiring disclosure of specific categories of financial interests.

NSF agrees that institutions should have some latitude to develop policies that fit local circumstances. For this reason, NSF's Policy requires institutions to solicit financial disclosures, but does not prohibit any particular financial interest or mandate specific rules for managing conflicts of interest. NSF believes that its system, in which institutions will have primary responsibility for collecting and reviewing financial disclosures, establishes the minimum requirements necessary to protect the integrity of NSF-funded research.

*Scope of Required Disclosure*

Most commenters agree that limited and targeted financial disclosure is a cornerstone of an effective conflict of interest policy. However, many believe the proposed Policy required more information than was necessary to effectively manage actual and potential conflicts of interest, and some suggested that disclosure be required only where financial ties are directly related to NSF-supported research. Two commenters from state institutions in Connecticut believe that their local Freedom of Information Act will essentially make these disclosures public information.

NSF has narrowed the Policy's disclosure requirements so that they now apply only to those individuals who are responsible for the design, conduct or reporting of research or educational activities funded or proposed for funding by NSF. In addition, the categories of disclosable financial interests have been limited to so that they now must relate to research funded or proposed for funding by NSF.

*Disclosure of Ties of Immediate Family and Close Business Associates*

Five commenters believe the Policy should not require disclosure of the financial interests of an investigator's immediate family, and nineteen thought it should not require disclosure of the financial interests of close business associates. These commenters cited privacy concerns, and, for close business associates, argued that it is inappropriate to require confidential information from these individuals, it might not be possible to elicit it in any event, and it is too difficult to determine what constitutes a close business associate.

NSF's Policy is meant to ensure that institutions have enough information to determine whether conflicts exist, and to impose appropriate safeguards. Clearly, financial interests of individuals other than the investigators themselves can, under certain circumstances, affect the objectivity with which the investigators conduct their research. This is particularly true where there is a close personal or business relationship between the investigator and another individual. However, NSF recognizes that requiring financial disclosure from all such persons presents certain difficulties and raises privacy concerns. NSF believes it reasonable to require disclosure of the relevant financial ties of an investigator's spouse and dependent children, but the relationship between an investigator and his or her "close business associate" is more attenuated. As a result, in light of concerns raised by commenters, the final Policy does not require that their financial interests be disclosed.

*Miscellaneous Comments*

One state institution pointed out that its institutional conflict of interest rules must be part of the state's administrative code, and this would require new legislation. The effective date for NSF's Policy will be one year following the date of its publication in the Federal Register. NSF hopes that this will provide institutions with sufficient time to implement required policies.

Two commenters believe institutions do not have sufficient expertise to conduct the types of investigations necessary to assure the reliability of investigator financial disclosure. NSF does not expect institutions to undertake herculean efforts to verify the accuracy of all disclosures. However, institutional policies should include viable and reasonable methods for enforcing those policies.

Two commenters asked whether NSF's Policy applies to subrecipients of grant funds. It does not.

One commenter asked whether the disclosure requirements apply to current financial ties, or to those which existed over some period of time. The requirements apply to current ties, but institutions must maintain records of disclosures until three years after the later of the termination or completion of the award to which they relate, or the resolution of any government action involving the records.

One commenter suggested that the disclosure requirements might conflict with consulting arrangements that prevent investigators from disclosing the name of companies for whom they consult. In such cases, in order to receive Federal funds, investigators would have to obtain permission to make the required disclosures, or discontinue the consulting arrangements. Investigators who enter into consulting arrangements that prevent disclosure could seek agreements with their institutions to maintain the confidentiality of arrangements they disclose to those institutions.

One commenter felt the guidelines for product evaluations should differ from those for basic research. NSF's Policy allows institutions to develop differing guidelines if they believe it appropriate.

Many comments specifically related to the proposed Policy's requirement of financial disclosure to NSF. Because this disclosure is not required by the final Policy, these comments are not discussed individually.

**Paperwork and Recordkeeping Burden**

In the proposed Policy, NSF estimated that it would take each investigator

listed on a grant proposal 20 minutes to prepare the required financial disclosures. Many commenters believed this seriously underestimated the actual paperwork burden associated with Policy, and several pointed out that it did not take into account the institutional burden associated with reviewing the disclosures. Few commenters provided suggestions for formulating a more accurate estimate. However, NSF has revised its estimate of the annual reporting and recordkeeping burden to take into account changes from the proposed Policy. NSF's revised estimates are as follows:

FINANCIAL DISCLOSURE REQUIREMENT

| No. of respondents | Hours per response [1] | Total hours |
|---|---|---|
| 38,000 | .5 | 19,000 |

[1] NSF estimates that 23% of all respondents will have financial interests to disclose, and 77% will not. The estimate assumes that it will take an hour to provide required financial disclosures when reportable ties exist, and twenty minutes when they do not.

RECORDKEEPING REQUIREMENT

| No. of recordkeepers | Hours per recordkeeper | Total hours |
|---|---|---|
| 2,000 | 8 | 16,000 |

Total hours for disclsoure and recordkeeping ..... 35,000

Organizations and individuals who wish to submit comments on the estimated burden should send them to:

Herman G. Fleming, Reports Clearance Officer, National Science Foundation, Washington, DC 20550
and
Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

*The Investigator Financial Disclosure Policy*

NSF's Investigator Financial Disclosure Policy has the following primary features:

A. A requirement that any NSF grantee employing more than fifty persons maintain "an appropriate written and enforced policy on conflict of interests".

B. Minimum requirements for what must be in an institution's policy. These include (a) limited and targeted financial disclosure, (b) designation of a person(s) to review the disclosures and resolve actual or potential problems revealed, (c) enforcement mechanisms, and (d) arrangements for informing NSF of conflicts issues that are not resolved to the satisfaction of the institution.

Changes made to NSF issuances to establish and communicate the Policy are described below. Copies of the NSF Grant General Conditions and the NSF publication Grant Proposal Guide may be obtained from the contact listed above. Copies of the NSF Grant Policy Manual may be obtained from the Government Printing Office.

WHAT WOULD BE REQUIRED IN INSTITUTIONAL POLICIES

*Grant General Conditions*

Insert a new subparagraph 23(b):

Records of investigator financial disclosures and of actions taken to manage actual or potential conflicts of interest (see Grant Policy Manual Section 310), shall be retained until 3 years after the later of the termination or completion of the award to which they relate, or the resolution of any government action involving those records.

Renumber subsequent subparagraphs accordingly.

Insert a new paragraph 33:

If the grantee employs more than fifty persons, the grantee shall maintain an appropriate written and enforced policy on conflict of interest consistent with the provisions of Grant Policy Manual Section 310.

Renumber subsequent paragraphs accordingly.

*Grant Policy Manual*

In GPM 516.3 "Consulting and Other Outside Activities of Principal Investigators Under NSF Awards", add to subparagraph "a.":

However, see GPM 310 on Conflict of Interest Policies.

Strike all after subparagraph "a.", including Exhibits V–1 and V–2.

Add a new GPM 310 "Conflict of Interest Policies":

a. NSF requires each grantee institution employing more than fifty persons to maintain an appropriate written and enforced policy on conflict of interest. Guidance for such policies has been issued by university associations and scientific societies.[1]

b. An institutional conflict-of-interest policy should require that each investigator disclose to a responsible representative of the institution all significant financial interests of the investigator (including those of the investigator's spouse and dependent children) (i) that would reasonably appear to be directly and significantly affected by the research or educational activities funded or proposed for funding by NSF; or (ii) in entities whose financial interests would reasonably appear to be directly and significantly affected by such activities.

The term 'investigator' means the principal investigator, co-principal investigators, and any other person at the institution who is responsible for the design, conduct, or reporting of research or educational activities funded or proposed for funding by NSF.

The term 'significant financial interest' means anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights and royalties from such rights).

The term does not include:

- salary, royalties or other remuneration from the institution; or any ownership interests in the institution, if the institution is an applicant under the Small Business Innovation Research Program or Small Business Technology Transfer Program;
- income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities;
- income from service on advisory committees or review panels for public or nonprofit entities; or
- financial interests in business enterprises or entities if the value of such interests do not exceed $5,000 or represent more than a 5% ownership interest for any one enterprise or entity when aggregated for the investigator and the investigator's spouse and dependent children.

c. An institutional policy must ensure that investigators have provided all required financial disclosures at the time the proposal is submitted to NSF. It must also require that those financial disclosures are updated during the pendency of the award, either on an annual basis, or as new reportable significant financial interests are obtained.

[1] See On Preventing Conflicts of Interests in Government-Sponsored Research at Universities, a Joint Statement of the Council of the American Association of University Professors and the American Council on Education (1964); Managing Externally Funded Programs at Colleges and Universities, especially "Principle X. Research Ethics and Conflicts", issued by the Council on Government Relations (1989); Guidelines for Dealing with Faculty Conflicts of Commitment and Conflicts of Interest in Research, issued by the Association of American Medical Colleges (1990); and Framework Document for Managing Financial Conflicts of Interest, issued by the Association of American Universities (1993).

d. An institutional policy must designate one or more persons to review financial disclosures, determine whether an actual or potential conflict of interest exists, and determine what conditions or restrictions, if any, should be imposed by the institution to manage, reduce or eliminate such conflict of interest. An actual or potential conflict of interest exists when the reviewer(s) reasonably determine that a significant financial interest could affect the design, conduct, or reporting of the research or educational activities funded or proposed for funding by NSF.

Examples of conditions or restrictions that might be imposed to manage, reduce or eliminate actual or potential conflicts of interest include:

- public disclosure of significant financial interests;
- monitoring of research by independent reviewers;
- modification of the research plan;
- disqualification from participation in the portion of the NSF-funded research that would be affected by the significant financial interests;
- divestiture of significant financial interests; or
- severance of relationships that create actual or potential conflicts.

If the reviewer(s) determines that imposing conditions or restrictions would be either ineffective or inequitable, and that the potential negative impacts that may arise from a significant financial interest are outweighed by interests of scientific progress, technology transfer, or the public health and welfare, then the reviewer(s) may allow the research to go forward without imposing such conditions or restrictions.

e. The institutional policy must include adequate enforcement mechanisms, and provide for sanctions where appropriate.

f. The institutional policy must include arrangements for keeping NSF appropriately informed if the institution finds that it is unable to satisfactorily manage an actual or potential conflict of interest.

g. Institutions must maintain records of all financial disclosures and of all actions taken to resolve actual or potential conflicts of interest until at least 3 years after the later of the termination or completion of the award to which they relate, or the resolution of any government action involving those records.

Renumber GPM Sections 310–40 accordingly.

WHAT WOULD BE REQUIRED IN PROPOSALS

*Grant Proposal Guide (Formerly Grants for Research and Education In Science and Engineering)*

In Section C–1 of Part II, INSTRUCTIONS FOR PROPOSAL PREPARATION, at the end of the Certification for Principal Investigators and Co-Principal Investigators, add:

A new certification has been added that requires Principal Investigators and Co-Principal Investigators to certify that they have read and understood the institution's conflict of interest policy; to the best of their knowledge, all required financial disclosures were made; and they will comply with any conditions or restrictions imposed by the institution to manage, reduce or eliminate actual or potential conflicts of interest.

In Section C–1 of Part II, INSTRUCTIONS FOR PROPOSAL PREPARATION, at the end of the Certification for Authorized Institutional Representative or Individual Applicant, add:

A new certification has been added that requires an institutional representative to certify that the institution has implemented and is enforcing a written policy on conflicts of interest consistent with the provisions of Grant Policy Manual Section 310; that, to the best of his/her knowledge, all financial disclosures required by the conflict of interest policy were made; and that actual or potential conflicts of interests, if any, were, or prior to funding the award, will be satisfactorily managed, reduced or eliminated in accordance with the institution's conflict of interest policy or disclosed to NSF.

In Appendix E on the Certification Page, add the following new certification to the Certification for Principal Investigators and Co-Principal Investigators:

(3) I have read and understand the institution's conflict of interest policy, if any; have made all financial disclosures required by it, if any; and will comply with any conditions or restrictions imposed by the institution to manage, reduce or eliminate actual or potential conflicts of interest.

In Appendix E on the Certification Page, add the following to the end of the section on Certification for Authorized Institutional Representative or Individual Applicant:

In addition, if the applicant institution employs more than fifty persons, the authorized official of the applicant institution is certifying that the institution has implemented a written and enforced conflict of interests policy that is consistent with the provisions of Grant Policy Manual Section 310; to the best of his/her knowledge, all financial disclosures required by that conflict of interests policy have been made; and all identified conflict of interests have been, or, prior to funding an award, will be either satisfactorily managed, reduced or eliminated in accordance with the institutions policies, or disclosed to NSF.

**Lawrence Rudolph,**

*Acting General Counsel.*

[FR Doc. 94–15551 Filed 6–27–94; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–277]**

### Philadelphia Electric Company

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Sections III.D.2.(a) and III.D.3 of Appendix J to 10 CFR Part 50, to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company (the licensee), for the Peach Bottom Atomic Power Station (PBAPS), Unit 2, located at the licensee's site in York County, Pennsylvania.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant an exemption from10 CFR Part 50, Appendix J, Sections III.D.2.(a) and III.D.3. Section III.D.2.(a) states, in part: "Type B tests, except tests for air locks, shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years." Section III.D.3 states: "Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years." The exemption would allow a one-time 60-day extension of the 2-year requirement. Hence, this one-time exemption would allow the licensee to perform the testing in Sections III.0.2.(a) and III.d.3 during Unit 2's Cycle 10 refueling outage scheduled to begin no later than September 24, 1994.

The proposed action is in accordance with the licensee's application for exemption dated April 18, 1994.

*Need for the Proposed Action*

BAPS, Unit 2 is utilizing a new core design which allows the intervals between reactor shutdowns for refueling to extend the maximum allowable 2-year interval. Prior to the current operating cycle, local leak rate tests were performed in conjunction with an operating cycle of 18 months. Use of extended cycle core designs has been recognized as a growing trend in the industry as discussed in the staff's Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," dated April 2, 1991. The staff previously granted the licensee license amendments to allow PBAPS, Unit 2 to perform selected surveillances on a 24-month interval (see Amendment 169 dated August 19, 1992, and Amendment 179 dated August 2, 1993). However, the regulations cited by the licensee in the exemption request have not been revised to reflect the use of a 24-month operating cycle. Therefore, the licensee has requested an exemption in order to avoid a premature shutdown which would be needed to accomplish the testing and to properly schedule the testing during the refueling outage.

*Environmental Impacts of the Proposed Action*

The Commission has completed the evaluation of the proposed exemption and concludes that this action would not significantly increase the probability or amount of expected primary containment leakage; hence, the containment integrity would be maintained.

Based on the information presented in the licensee's application, the proposed extended test interval would not result in a non-detectable leakage rate in excess of the value established by 10 CFR Part 50, Appendix J, or in any changes to the containment structure or plant systems. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption otherwise affect radiological plant effluents. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since the Commission concluded that there are no measurable environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

*Alternate Use of Resources*

This proposed action does not involve the use of any resources not previously considered in the final Environmental Statements for the Peach Bottom Atomic Power Station, Units 2 and 3, dated April 1973.

*Agencies and Persons Consulted*

The staff consulted with the State of Pennsylvania regarding the environmental impact of the proposed action.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated April 18, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 17th day of June 1994.

For the Nuclear Regulatory Commission.

**Charles L. Miller,**

*Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–15613 Filed 6–27–94; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards Subcommittee Meeting on Containment Systems; Cancellation

A meeting of the ACRS Subcommittee on Containment Systems scheduled to be held on July 6, 1994, Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland has been cancelled since the documents scheduled for discussion with the NRC staff and industry have been delayed. Notice of this meeting was published in the **Federal Register** on Tuesday, June 21, 1994 (59 FR 32028).

Further information contact: Mr. M. Dean Houston, the cognizant ACRS staff engineer (telephone 301/492–9521), between 7:30 a.m. and 4:15 p.m. (est).

Dated: June 21, 1994.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 94–15612 Filed 6–27–94; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Notice of Request for Reclearance of SF 3104, SF 3104A, and SF 3104B

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for a reclearance of an information collection. SF 3104, Application for Death Benefits (FERS), is needed for the Office of Personnel Management to determine whether death benefits should be paid, to whom, and in what amount. SF 3104A (attached to SF 3104), requests information from the survivor which is used by OPM to determine entitlement to a survivor annuity supplement (supplementary annuity). SF 3104B is used by the deceased employee's former employing agency in death-in-service cases, to supply the survivor's application for death benefits (SF 3104).

Approximately 3,546 SF 3104s are completed annually. We estimate that it takes 60 minutes to fill out the form. The annual burden is 3,546 hours. Approximately 2,766 SF 3104Bs are completed annually. We estimate that it takes 60 minutes to fill out the form. The annual burden is 2,766 hours. The combined total annual burden is 6,312 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Daniel A. Green, Retirement and Insurance Group, FERS Division, U.S. Office of Personnel Management, 1900 E. Street, NW, Room 4429, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

**FOR FURTHER REGARDING ADMINISTRATIVE COORDINATION—CONTACT:**
Mary Beth Smith-Toomey, Chief, Forms Analysis and Design, (202) 606–0623.

U.S. Office of Personnel Management
**Lorraine A. Green,**
*Deputy Director.*

[FR Doc. 94–15480 Filed 6–27–94; 8:45 am]
**BILLING CODE 6325–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–34244; File No. SR–Phlx–94–14]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to its Order and Decorum Regulations

June 22, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 10, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On March 31, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] On June 22, 1994, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Regulation 4 ("Order") as follows: (1) to adopt paragraph (b) permitting two Floor Officials to refer particularly egregious or repetitive violations to the Exchange's Business Conduct Committee; (2) to renumber the existing provisions as (a)(i)—(iii); (3) to add to the general prohibition against disorderly conduct a proscription against acting in an indecorous manner which is disruptive to the conduct of business on the trading floor; and (4) to adopt paragraph (a)(iv) imposing a fine ranging from $500 to $1,000 for each instance of abusive, derisive or harassing treatment directed at any person while on the floor, which, in the view of two Floor Officials, could constitute a public embarrassment to the Exchange.[3]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) **Purpose**

Regulation 4 ("Order") is the most fundamental of the Exchange's order and decorum regulations, which are adopted pursuant to Phlx Rule 60 ("Assessments for Breach of Regulations"). Rule 60 permits Exchange officials and Floor Officials to assess fines, not exceeding $1,000, for violations of regulations pertaining to order, decorum, health, safety and welfare ("order and decorum") on the Exchange, or to refer such violations to the Exchange's Business Conduct Committee where higher fines or other sanctions may be imposed, in accordance with Phlx Rule 960.[4] Rule 60 also enumerates the procedural aspects of order and decorum fines, including the ability to contest a fine and request a hearing. The Exchange has adopted seven regulations of order and decorum pursuant to Rule 60, including regulation 4.[5]

In summary, Regulation 4 governs conduct on the trading floors of the Exchange by prohibiting disorderly conduct and imposing fines for violations thereof. In addition to a general prohibition against disorderly behavior, specific fines are also imposed for abuse of the paging system, possession of firearms, and various degrees of fighting, including inciting physical abuse, minor acts of physical abuse and major acts of physical abuse.

At this time, the Exchange proposes to add a new paragraph (b) Stating that any acts described in paragraph (a) which are deemed particularly egregious, or where an individual has established a pattern or order violations, may be referred by two Floor Officials to the Business Conduct Committee where additional fines and other sanctions may be imposed pursuant to Phlx rule 960.[6] As a result of this proposed language, similar language which currently follows the paragraph addressing physical abuse is proposed to be deleted in order for the new paragraph to apply to all violations of Regulation 4.

In addition to adopting new paragraph (b), the proposal would also renumber the existing provisions of the regulation. The following language in the introductory paragraph is proposed to be deleted as redundant: instances determined by a Floor Official as violative of the "Order" requirement

[1] *See* letter from General D. O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, SEC, dated March 30, 1994. Amendment No. 1 clarified that in any instance where an act described in Regulation 4(a) is deemed particularly egregious, or where an individual has established a pattern of order violations, two floor officials may refer the matter to the Business Conduct Committee where additional fines and other sanctions may be imposed pursuant to Phlx Rule 960.

[2] *See* letter from Gerald D. O'Connell, First Vice President, Phlx, to Sharon Lawson, Assistant Director, SEC, dated June 22, 1994.

[3] The text of the proposed amendment was attached as Exhibit B to File No. SR–Phlx–94–14 and is available at the locations specified in Item IV.

[4] Phlx Rule 960 governs disciplinary procedures at the Exchange. Rule 960 provides for, among other things, a statement of charges, answer, hearing, decision, petition for review of decision, and sanctions, which include expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction.

[5] In addition to Regulation 4, the Exchange's Rule 60 Regulations govern smoking; food, liquids, and beverages; identification badges and access cards, visitors and applicants, dress; and proper utilization of the security system. *See* Phlx Rule 60 Regulations.

[6] The Exchange stated that two Floor Officials could not impose a fine or sanction pursuant to both Rules 60 and 960 for the same conduct. The Exchange also stated that if a disciplinary proceeding pursuant to Rule 960 is initiated by the Exchange, all procedural rights contained in Rule 960 would apply. Conversation between Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, and Louis A. Randazzo, Attorney, SEC, on March 25, 1994.

may result in fines as described below. The first paragraph would be renumbered as (a), with the abuse of paging system, firearms and physical abuse provisions numbered (i)—(iii), respectively.

The following prohibition is proposed to be added to paragraph (a) to expand upon the general prohibition against disorderly conduct: acting in an indecorous manner which is disruptive to the conduct of business on the trading floor. The new language explicitly prohibits behavior that results in a disruption of trading and provides a gauge by which a Floor Official may determine whether a certain act was disorderly (if an act caused floor traders to divert their attention from trading, the act could be construed as disorderly).

The Exchange also proposes to adopt new paragraph (a)(iv) to prohibit instances of abusive, derisive or harassing treatment directed at any person while on the floor, which in the view of two Floor Officials, could constitute a public embarrassment to the Exchange, and impose a fine ranging from $500 to $1,000 for such violations. The Exchange believes that because such behavior is indecorous but not disruptive to trading in each case, it warrants a separate fine between $500 and $1,000 and direct prohibition. This provision is intended to specifically implement Exchange Rule 708 ("Acts Detrimental to the Interest or Welfare of the Exchange").[7] Specifically, Rule 708, Commentary .01(e) prohibits misconduct on the trading floor, in violation of the Exchange's Order and Decorum Regulations, that is repetitive, egregious of a publicly embarrassing nature to the Exchange rule 708 would specifically enable the Exchange's Business Conduct Committee to pursue formal disciplinary action for disorderly conduct on the trading floor. The purpose of the present proposal is to provide an established procedure by which referrals of such floor misconduct would be made to the Business Conduct Committee by Floor Officials.

(b) Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, and protect investors and the public interest by ensuring an orderly and decorous environment on the trading floor for Exchange business to be conducted. The proposal is also consistent with Section 6(b)(6), in that Regulation 4, as amended, would continue to provide that members of the Exchange be appropriately disciplined for violations of the rules of the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others.*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–14 and should be submitted by July 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–15609 Filed 6–27–94; 8:45 am]

BILLING CODE 8010–01–M

[7] Phlx Rule 708 was approved by the Commission on April 1, 1994. *See* Securities Exchange Act Release No. 33850 (April 1, 1994) (order approving File No. SR–Phlx–93–53).

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**[Rel. No. IC–20365; 811–5841]**

## Centennial Appreciation Portfolio, Series 1 and 2; Notice of Application for Deregistration

June 21, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Centennial Appreciation Portfolio, Series 1 and 2 (the "Trust").

**RELEVANT ACTION SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on December 8, 1993, and amended on February 11, 1994 and May 6, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 3410 South Galena Street, Denver, Colorado 80231.

**FOR FURTHER INFORMATION CONTACT:** Marc Duffy, Staff Attorney, (202) 942–0565, or C. David Messman, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

**Applicant's Representations**

1. The Trust is an unit investment trust organized under the laws of the State of New York. The Trust offered shares in two series ("Series 1" and "Series 2"). On July 6, 1989, the Trust registered under the Act pursuant to section 8(a). On August 4, 1989, the Trust filed a registration statement under section 8(b) of the Act, and registered an indefinite number of units of Series 1 under the Securities Act of 1933. The registration statement was declared effective, and the public sale of units of Series 1 commenced on October 23, 1989. On November 30, 1989, the Trust filed a registration statement to register an indefinite number of units of Series 2. The registration statement was declared effective, and the public sale of units of Series 2 commenced, on January 22, 1990.

2. Pursuant to their respective indentures, the termination date for Series 1 and Series 2 was October 23, 1990 and January 22, 1991, respectively. Each termination date was disclosed as the Mandatory Termination Date of that series in its respective Prospectus. The purpose of the Trust was to assemble a portfolio of common stocks that over a year period was designed to outperform indices of market performance.

3. Upon termination of the Trust, Security Pacific National Trust Company (the "Trustee") sold the securities held in each series and credited the monies derived from such sales to the income and capital accounts of the respective series. The Trustee then deducted fees and expenses of the Trust as well as amounts payable into a reserve account for taxes, and distributed to each unitholder his or her *pro rate* share of the income and capital accounts.

4. In their final year of operation, Series 1 incurred $24,642 and Series 2 incurred $20,690 in expenses and Trustee's fees. The Trustee's fees were paid to the Trustee. The principal expense of the Trust and of the shareholder servicing agent of each series that were paid by the Trust were for postage, printing, and professional fees.

5. The net asset value of Series 1 on October 23, 1990 was $13.35 per unit, for an aggregate value of $15,955,947. The net asset value of Series 2 on December 31, 1990 was $14.47 per unit for an aggregate value of $4,080,670.

6. At the time of filing of the application, the Trust had no assets or liabilities. The Trust has no shareholders and is not a party to any litigation or administrative proceeding. The Trust is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–15610 Filed 6–27–94; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

**[Public Notice 2028]**

### Bureau of Economic and Business Affairs; International Communications and Information Policy; Notice of Meeting

The Department of State announces that the Office of International Communications and Information Policy will hold an ad hoc meeting on the future structure of the international treaty satellite organizations, INTELSAT and INMARSAT, and the role of the U.S. government in those organizations. The meeting will be held on Thursday, July 14, 1994 at 9:00 a.m. in the Dean Acheson Auditorium at the Department of State, 2201 C Street NW., Washington, DC 20520.

The United States government has under consideration the issue of the future structure of the international treaty satellite organizations in an increasingly competitive environment. The United States is interested in ensuring the most dynamic, competitive and fair marketplace feasible for existing and prospective international satellite service providers. The government is seeking information and data on the implications for a competitive market structure in the event that INTELSAT and INMARSAT were either to cease being subject to existing international treaty arrangements or if those treaty arrangements were modified.

The purpose of the meeting is to obtain views and information from the public and industry on what future structure of the organizations and their governing treaty arrangements will best assure that the interests and objectives of the U.S. and the international community are met. These interests and objectives include: U.S. economic interests, consumer benefits and fair competition, national security interests, strategic redundancy and reliability, universal service and maritime distress and safety services. The government is also interested in receiving comments on how the continuation of public service functions can be ensured and whether some form of continued intergovernmental oversight should continue. Whenever possible, comments should provide empirical evidence to support their assertions.

**Guidelines for Written Comment and Oral Testimony**

Written comments should be provided in triplicate and include the following information:

1. Name and affiliation of the individual responding;

2. Whether the comments offered represent the views of the individual's organization or are the respondent's personal views;

3. If applicable, a description of the respondent's organization, including the size, type of organization (e.g. business, trade group, university, non-profit organization) and principal types of business;

4. A brief, one-page summary of the comments submitted.

Those wishing to present oral testimony must adhere to the following guidelines:

1. No one will be permitted to testify without prior approval.

2. Requests for presenting oral testimony and a written copy of the speaker's testimony must be submitted by Friday, July 8.

3. In addition to the guidelines for written comments above, requests to testify also should include the speaker's mailing address and phone and facsimile numbers.

4. The exact time allocated per speaker will be determined after the final number of parties testifying has been determined.

Written comments and supporting data and requests for presenting oral testimony should be addressed to Robert Lutkoski, room 6317, Department of State, 2201 C Street NW., Washington, DC 20520 no later than Friday, July 8. Every attempt will be made to permit all interested persons an opportunity to present their views at the meeting. Reply comments may be submitted five working days after the meeting. Parties may request pursuant to FOIA exemptions confidentiality for any proprietary information submitted in support of their comments or reply comments.

Admittance will be limited to the seating available (approximately 100). Entrance to the Department of State is controlled and will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should advise Anika Scott by telephone (202–647–5212) or fax (202–736–4034) by Thursday, July 7. Attendees must provide their date of birth and Social Security number at the time they register their intention to attend and

must carry a valid photo ID to the meeting to be admitted.

Dated: June 22, 1994.

**Vonya B. McCann,**

*Deputy Assistant Secretary for International Communications and Information Policy.*

[FR Doc. 94–15639 Filed 6–27–94; 8:45 am]

BILLING CODE 4710–07–M

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**[Public Notice 2024]**

## Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Notice of Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on Wednesday, August 24, Wednesday, September 18, and Wednesday, October 26, 1994. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950. The purpose of these meetings is to discuss the papers received and the draft U.S. positions in preparation for the 40th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for early 1995, at the IMO headquarters in London, England.

Among other things, the items of particular interest are:

—The implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G–TTM), Room 6311, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–1389.

Dated: June 15, 1994.

**Marie Murray,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 94–15561 Filed 6–27–94; 8:45 am]

BILLING CODE 4710–07–M

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Generalized System of Preferences (GSP); Initiation of a Review To Consider the Designation of Armenia as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and solicitation of public comment with respect to the eligibility of Armenia for the GSP program.

**SUMMARY:** This notice announces the initiation of a review to consider the designation of Armenia as a beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., Room 517, Washington, DC 20506. The telephone number is (202) 395–6971.

**SUPPLEMENTARY INFORMATION:** The Trade Policy Staff Committee (TPSC) has initiated a review to determine if Armenia meets the designation criteria of the GSP law and should be designated as a beneficiary developing country for purposes of the GSP, which is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The designation criteria are listed in sections 502(a), 502(b), and 502(c) of the Act. Interested parties are invited to submit comments regarding the eligibility of Armenia for designation as a GSP beneficiary. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided to other developed countries, expropriation without compensation, enforcement of arbitral awards, support of international terrorism, and protection of internationally recognized worker rights. Other practices taken into account relate to the extent of market access for goods and services, investment practices and protection of intellectual property rights.

Comments must be submitted in 14 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, NW., Room 517, Washington, DC 20506. Comments must be received no later than 5 p.m. on Wednesday, August 3, 1994. Information and comments submitted regarding Armenia will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the document contains business confidential information, 14 copies of a nonconfidential version of the submission along with 14 copies of the confidential version must be submitted. In addition, the submission should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 94–15607 Filed 6–27–94; 8:45 am]

BILLING CODE 3190–01–M

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## DEPARTMENT OF TRANSPORTATION

## Aviation Proceedings; Agreements filed during the Week Ended June 17, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 49603
*Date filed:* June 13, 1994
*Parties:* Members of the International Air Transport Association
*Subject:* Telex TC3 Mail Vote 689, Japan/Korea-Brunei/Viet Nam fares r–1 to r–8
*Proposed Effective Date:* September 4, 1994

*Docket Number:* 49604
*Date filed:* June 13, 1994
*Parties:* Members of the International Air Transport Association
*Subject:* TC12 Reso/P 1584 dated June 10, 1994, Expedited Mid Atlantic-Europe/Middle East Resos
*Proposed Effective Date:* expedited August 1, 1994

*Docket Number:* 49608
*Date filed:* June 15, 1994
*Parties:* Members of the International Air Transport Association
*Subject:* TC2 Telex Mail Vote 690, Fares within Africa, r–1—042c r–2—052c r–3—062c
*Proposed Effective Date:* July 4, 1994

*Docket Number:* 49612
*Date filed:* June 17, 1994
*Parties:* Members of the International Air Transport Association
*Subject:* TC2 Reso/P dated June 14, 1994 r–1 to r–5, TC2 Reso/P 1598 dated June 14, 1994 r–6 to r–11, TC2 Reso/P 1600 dated June 14,

1994 r–12 to r–18
*Proposed Effective Date:* expedited August 1, 1994

*Docket Number:* 49613
*Date filed:* June 17, 1994
*Parties:* Members of the International Air Transport Association
*Subject:* TC12 Telex Mail Vote 691, Special Reso to/from Puerto Rico/ Virgin Islands
*Proposed Effective Date:* August 1, 1994

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 94–15600 Filed 6–27–94; 8:45 am]
BILLING CODE 4910–62–P

## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 17, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 49605
*Date filed:* June 13, 1994
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 11, 1994
*Description:* Application of TSP, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for issuance of a certificate of public convenience and necessity authorizing TSP to provide scheduled interstate and overseas air transportation of persons, property and mail between various points in the United States.

*Docket Number:* 49614
*Date filed:* June 17, 1994
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 15, 1994
*Description:* Application of Airship Airways, Inc., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity authorizing Airship to provide interstate and overseas charter air transportation of persons, property and mail.

*Docket Number:* 49615
*Date filed:* June 17, 1994
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 15, 1995
*Description:* Application of Airship Airways, Inc., pursuant to Section 401(d)(3) of the Act and Subpart Q of the Regulations, for a certificate of public convenience and necessity authorizing Airship to provide charter foreign air transportation of persons, property and mail between a point or points in the United States and points in other countries.

*Docket Number:* 48658
*Date filed:* June 16, 1994
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 14, 1994
*Description:* Application of Southern Air Transport, Inc., pursuant to Section 401 of the Act, applies for the amendment of its Certificate of Public Convenience and Necessity to authorize Southern to provide scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and the co-terminal points Barranquilla, Bogota, Cali, and Cartagena, Colombia, on the other hand, via intermediate points.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 94–15599 Filed 6–27–94; 8:45 am]
BILLING CODE 4910–62–P

## Federal Aviation Administration

## Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.
**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

**DATES:** The meeting will be held on July 21, 1994, at 9 a.m. Arrange for oral presentations by July 14, 1994.

**ADDRESSES:** The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8235.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking advisory committee to be held on July 21, 1994, at the General Aviation Manufacturers Association, Suite 801, 1400 K Streeet, NW, Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Working Group Reports

ICPTF
ELT
Delegation System
Parts
Production Certification

- Old Business
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 14, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, of requested 10 calendar days before the meeting.

Issued in Washington, DC, on June 21, 1994.

**Daniel P. Salvano,**
*Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.*
[FR Doc. 94–15624 Filed 6–27–94; 8:45 am]
BILLING CODE 4910–13–M

## RTCA, Inc.; RTCA Special Committee 169 Twelfth Meeting; Notice

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 169 meeting to be held July 21, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036. Agenda is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the Summary of the Eleventh Meeting held April 12, 1994. (RTCA Paper No. 224–94/ SC169–223); (4) Report on Working Group 3, Flight Information Services Communications,

activities; (5) Status ATN; (6) Ground to ground data link systems; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 21, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–15625 Filed 6–27–94; 8:45 am]

BILLING CODE 4910–13–M

## RTCA, Inc.; RTCA Special Committee 184 First Meeting; Notice

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 184 meeting to be held July 25–26, starting at 9 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036.

Agenda is as follows: (1) Administrative announcements; (2) Chairman's introductory remarks; (3) Review and approval of meeting agenda; (4) Presentation by Sieg Poritzky; (5) Review Committee Terms of Reference, RTCA Paper No. 240–94/SC184–1; (6) Identify goals and examine milestones; (7) Assign tasks; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 21, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–15626 Filed 6–27–94; 8:45 am]

BILLING CODE 4910–13–M

## RTCA, Inc; RTCA Technical Management Committee; Notice of Meeting

### Order of Business

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for the RTCA Technical Management Committee meeting to be held July 13, 1994, starting at 9 a.m. The meeting will be held at the National Business Aircraft Association, 1200—18th Street, NW., Second Floor, Washington, DC 20036, Phone: (202) 783–9000.

(1) Chairman's remarks; (2) Approve summary of April 29, 1994 meeting; (3) Consider/approve: (a) Proposed final draft Minimum Operational Performance Standards for Aircraft Context Management (CM) Equipment. Prepared by SC–169. (b) 2nd Proposed Change No. 1 to RTCA/DO–204, Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT). Prepared by SC–160. (c) Proposed Change No. 1 to RTCA/DO–217, Minimum Aviation System Performance Standards DGNSS Instrument Approach System: Special Category I (SCAT–I). Prepared by SC–159. (4) Other business; (5) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 21, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–15627 Filed 6–27–94; 8:45 am]

BILLING CODE 4910–13–M

# DEPARTMENT OF THE TREASURY

## Public Information Collection Requirements Submitted to OMB for Review

June 21, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

### Comptroller of the Currency (OCC)

*OMB Number:* New

*Form Number:* None

*Type of Review:* New Collection

*Title:* Review of Banking Industry Views of the OCC

*Description:* The OCC will collect information from financial institutions regarding their views on the OCC. The OCC will use this information as background to analyze its operations, and to identify ways to improve its service to the banking industry.

*Respondents:* Businesses or other for-profit, Small businesses or organizations

*Estimated Number of Respondents:* 50

*Estimated Burden Hours Per Respondent:* 30 minutes

*Frequency of Response:* Other (one-time interview)

*Estimated Total Reporting Burden:* 13 hours

*Clearance Officer:* John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219

*OMB Reviewer:* Milo Sunderhauf (202) 395–3176, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 94–15636 Filed 6–27–94; 8:45 am]

BILLING CODE 4810–33–P

## Public Information Collection Requirements Submitted to OMB for Review

June 21, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* New
*Form Number:* IRS Form 2106–EZ
*Type of Review:* New collection
*Title:* Unreimbursed Employee Business Expenses
*Description:* Internal Revenue Code (IRC) section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing Adjusted Gross Income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106–EZ is used to figure these expenses.
*Respondents:* Individuals or households
*Estimated Number of Respondents/ Recordkeepers:* 3,337,019
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—40 minutes
Learning about the law or the form—41 minutes
Preparing the form—28 minutes
Copying, assembling, and sending the form to the IRS—20 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting/ Recordkeeping Burden:* 5,139,009 hours

*OMB Number:* 1545–0059
*Form Number:* IRS Form 4137
*Type of Review:* Revision
*Title:* Social Security and Medicare Tax on Unreported Tip Income
*Description:* Section 3102 requires an employee who receives tips subject to Social Security and Medicare tax to compute tax due on these tips if the employee did not report them to his or her employer. The data is used to help verify that the Social Security and Medicare tax on tip income is correctly computed.
*Respondents:* Individuals or households
*Estimated Number of Respondents/ Recordkeepers:* 76,000
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—26 minutes
Learning about the law or the form—6 minutes
Preparing the form—21 minutes
Copying, assembling, and sending the form to the IRS—17 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting/ Recordkeeping Burden:* 89,680 hours

*OMB Number:* 1545–0139
*Form Number:* IRS Form 2106
*Type of Review:* Revision
*Title:* Employee Business Expenses
*Description:* Internal Revenue Code (IRC) section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing Adjusted Gross Income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106 is used to figure these expenses.
*Respondents:* Individuals or households
*Estimated Number of Respondents/ Recordkeepers:* 762,514
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—1 hr., 38 minutes
Learning about the law or the form—19 minutes
Preparing the form—1 hr., 13 minutes
Copying, assembling, and sending the form to the IRS—42 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting/ Recordkeeping Burden:* 2,663,610 hours
*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–3176, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 94–15637 Filed 6–27–94; 8:45 am]
BILLING CODE 4830–01–P

## Public Information Collection Requirements Submitted to OMB for Review

June 22, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1068
*Regulation ID Number:* INTL–362–88 NPRM, INTL–953–86 TEMP
*Type of Review:* Extension
*Title:* Definitions of a Controlled Foreign Corporation and Foreign Personal Holding Company Income of a Controlled Foreign Corporation After December 31, 1986
*Description:* An election is required to exclude from the computation of Subpart F income, income subject to rate of tax imposed by a foreign country that is gains or losses from qualified commodities, hedging transactions and foreign currency gains or losses from qualified businesses transactions for qualified hedging transactions. In order to allow taxpayers to avoid that recordkeeping requirement, an election is provided to treat all foreign currency gains or losses attributable to certain transactions as foreign personal holding company income.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents/ Recordkeepers:* 26,500
*Estimated Burden Hours Per Respondent/Recordkeeper:* 10 minutes
*Frequency of Response:* Other (One-Time Currency Election)
*Estimated Total Reporting/ Recordkeeping Burden:* 49,417 hours
*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–3176, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 94–15638 Filed 6–27–94; 8:45 am]
BILLING CODE 4830–01–P

## United States Customs Service

### Tariff Classification of Imported Magnets

**AGENCY:** U.S. Customs Service, Department of Treasury.
**ACTION:** Proposed change of position; solicitation of comments.

**SUMMARY:** This notice advises the public that Customs proposes a change of position regarding the classification of imported articles consisting of small metal or barium ferrite magnets placed in a plastic, textile or ceramic housing (sometimes referred to as refrigerator or household magnets), under the Harmonized Tariff Schedule of the United States (HTSUS).

Customs has ruled in the past that based on the composition of the magnet, it was classified either as an article of metal under heading 7323, HTSUS, or as an article of ceramic (barium ferrite) under heading 6912, HTSUS.

After intensive review, Customs now believes that because composite goods

consisting of magnets and a textile, plastic or ceramic housing or shell, have the essential character of magnets, they are properly classifiable as such under heading 8505, HTSUS. The result of this proposed change of position would be a small decrease in the rate of duty on the subject merchandise.

By this action, those rulings which are inconsistent with our current position would be revoked. Before adopting this proposed change, consideration will be given to any written comments timely submitted in response to publication of the document.

**DATES:** Comments must be received on or before August 29, 1994.

**ADDRESSES:** Written comments (preferably in triplicates) may be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, Franklin Court, 1301 Constitution Avenue NW., Washington, DC 20229. Comments filed may be inspected at the Office of Regulations and Rulings, Regulations Branch, Franklin Court, 1099 14th Street NW., Suite 4000, Washington D.C.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Altneu, Office of Regulations and Rulings (202) 482–7030.

**SUPPLEMENTARY INFORMATION:**

**Background**

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Magnets are specifically provided for in heading 8505, HTSUS. In several rulings, we have held that articles consisting of a magnet placed within a decorative housing or shell made of plastic, ceramic, or textile (sometimes referred to as refrigerator or household magnets), were composite goods. Classification was considered under the following subheadings and duty rates:

6912.00.50: Ceramic tableware, kitchenware, other household articles * * *: [o]ther

The general, column one rate of duty is 7 percent ad valorem.

7323.99.90: Table, kitchen or other household articles and parts thereof, of iron or steel .* * *: [o]ther: [o]ther: [n]ot coated or plated with precious metal: [o]ther: [o]ther. * * *.

The general, column one rate of duty is 3.4 percent ad *valorem*.

8505.19.00: Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization. * * *: [p]ermanent magnets and articles intended to become permanent magnets after magnetization: [o]ther. * * *

The general, column one rate of duty is 4.9 percent ad *valorem*.

Because the article was a composite good consisting of metal, ceramic, textile, and/or plastic, it was prima facie classifiable under two or more headings. Customs would then apply GRI 3(b) to determine the essential character of the article.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Cooperation Council's official interpretation of the HTSUS. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). EN VIII to GRI 3(b) states as follows:

> [T]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In the rulings issued, Customs concluded that the magnet imparts the essential character to the article. The plastic, textile or ceramic portion of the article merely embellished the article and acted as a decorative selling feature.

However, Customs precluded classification of the article under heading 8505, HTSUS, which specifically provides for permanent magnets based upon a portion of EN 85.05. EN 85.05, page 1341, states in pertinent part as follows:

> [T]his heading does not cover: [e]lectro-magnets, permanent magnets or magnetic devices of this heading, when presented with machines, apparatus, toys, games, etc., of which they are designed to form part (classified with those machines, apparatus, etc.)

Based upon this portion of EN 85.05, we held that the magnets were designed to form part of the article. It was concluded that because the magnets are presented with and incorporated into a textile, ceramic or plastic article (i.e., a hook, fruit caricature or advertising slogan), they are precluded from classification in heading 8505, HTSUS. Because the essential character of the article is the magnet, the article would then be classified based upon the composition of the magnet as an article of metal under heading 7323, HTSUS, or as an article of ceramic (barium ferrite) under heading 6912, HTSUS.

Several rulings were issued following this rationale. *See* HQs 082500, 083130, 083133, 083134, 089332, 089333, 089760; NYs 860370, 862523. This list may not be exhaustive. There may be others issued by Customs in New York or in the various Customs districts under the pre-entry classification procedures.

**Proposed Change of Position**

After intensive analysis, we believe that EN 85.05 has been misinterpreted. The exclusion in EN 85.05 is designed to cover only those articles in which the magnet is merely an insignificant part of a larger article (*i.e.*, kitchen cabinets with a magnet to keep the doors closed). In such cases, the magnet portion is ignored for classification purposes, and the article (*i.e.*, kitchen cabinet) is classified as if the magnet were not present.

In regards to articles consisting of a metal or barium ferrite magnet and a plastic, textile or ceramic shell or housing (i.e., a hook, fruit caricature or an advertisement slogan), Customs believes that they are a composite good. Customs will continue to apply an essential character analysis pursuant to GRI 3(b) to find the essential character of the merchandise. If the shell or housing portion of the article merely embellishes the product and acts as a decorative selling feature, and the essential character is imparted by the magnet, then the article is properly classifiable in heading 8505, HTSUS, as a permanent magnet. This change in position only relates to how Customs interprets the exclusion stated in EN 85.05.

**Authority**

This notice is published in accordance with section 177.10, Customs Regulations (19 CFR 177.10).

**Comments**

Before adopting this proposed change in position, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 103.11(b)), on regular business days between the hours of 9:00 and 4:30 p.m. at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street NW., Suite 4000, Washington, D.C.

Approved: June 14, 1994.

George J. Weise,

*Commissioner of Customs.*

[FR Doc. 94–15646 Filed 6–27–94; 8:45 am]

BILLING CODE 4820–02–P

## Customs Service

### Accounting Procedures for Drawback

**AGENCY:** U.S. Customs Service, Department of Treasury.

**ACTION:** Proposed Change of Position; solicitation of comments.

**SUMMARY:** This notice advises the public that Customs proposes to amend the general drawback rate for crude petroleum and petroleum derivatives to permit first-in-first-out (FIFO) accounting for exports and drawback deliveries of petroleum products with different drawback factors which are commingled in inventory. Currently, such accounting is required on the basis of lower-to-higher drawback factors; and is not consistent with recent changes to the Customs Regulations in this regard or commercial accounting procedures. Additionally, Customs proposes to revoke a published ruling and any unpublished rulings to the same effect under which identification of merchandise and articles for drawback purposes is permitted on a higher-to-lower basis. This change is consistent with the Customs Regulations, commercial accounting procedures, and efficient administration and will result in revenue neutrality when drawback claimants choose to commingle merchandise or articles and to identify them by an accounting procedure.

**DATES:** Comments must be received on or before August 29, 1994.

**ADDRESSES:** Written comments (preferably in triplicate) may be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments filed may be inspected at the Regulations Branch, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paul Hegland, Entry Rulings Branch, Office of Regulations and Rulings (202) 482–7040.

### Background

Section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), authorizes "drawback". Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and same condition drawback. Under paragraph (a) of § 1313, drawback is authorized when imported merchandise is used in the manufacture of articles which are exported. Under paragraph (j)(1) of § 1313, drawback is authorized when imported merchandise is exported (or destroyed) in the same condition as when it was imported, if the merchandise is not used in the U.S. Paragraphs (b) and (j)(2) of § 1313 respectively provide for the substitution of domestic or other merchandise for the imported merchandise in manufacturing and same condition drawback. Paragraph (l) of § 1313 provides that the allowance of drawback shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe.

The Customs Regulations pertaining to drawback are found in Part 191 of the Customs Regulations (19 CFR Part 191). Under the Customs Regulations (19 CFR Part 191, Subparts B and D), manufacturers or producers of articles intended for exportation with drawback under § 1313(a) or (b) must apply for and obtain approval of a drawback contract (sometimes called a drawback "rate") describing the manufacturing or production operations covered and setting forth the conditions which are to be met to obtain drawback.

The general requirements in the Customs Regulations for records, storage, and identification pertaining to drawback are found in 19 CFR 191.22. Section 191.22(c) authorizes the identification for drawback purposes of commingled lots of fungible merchandise and articles by applying first-in-first-out (FIFO) accounting principles or any other accounting procedure approved by Customs.

Section 191.22(c) was added to the Customs Regulations in its current form when the drawback regulations (formerly in Part 22 of the Customs Regulations) were revised in 1983 (T.D. 83–212, published in the **Federal Register** on October 14, 1983 (48 FR 46740)). Before this revision, the corresponding provision in Part 22 of the Customs Regulations (19 CFR 22.4(f)) permitted identification of fungible merchandise and articles commingled in storage on the basis of the lot or lots of merchandise or articles with the lowest drawback value or allowance first, then the next-lowest, and so on (i.e., "lower-to-higher").

The Notice of Proposed Revision of Part 22 (published in the **Federal Register** on August 26, 1982 (47 FR 37563)) would have limited the accounting method for identification of merchandise and articles commingled in storage to FIFO only (47 FR 37565, 37573). The reason given for the introduction of the FIFO accounting procedure was that the then existing provision was difficult to administer and inconsistent with commercial accounting techniques. Section 191.22(c) was changed to its current form when the final revision was issued as T.D. 83–212. The change (i.e., permitting other accounting procedures in addition to FIFO) was made in response to a comment that identification should not be limited to FIFO. Customs stated, in the T.D., that the comment was believed to have merit and "[t]herefore, other accounting procedures such as 'low-to-high,' 'identification,' and 'blanket identification' may be used." ("Identification" is direct or actual identification (i.e., identification without recourse to an accounting method such as FIFO) and "blanket identification" is similar to lower-to-higher.)

Customs has issued a number of rulings on the accounting procedures which may be used to identify merchandise or articles for drawback purposes. In a memorandum dated September 3, 1981 (File: 213253), all Regional Commissioners were directed to permit the use of FIFO in place of lower-to-higher identification and 19 CFR 22.4(f) (requiring lower-to-higher identification) was waived pending the promulgation of § 191.22(c) in the proposed revision of the Customs Regulations pertaining to drawback. The reason given for this action was to ". . . create savings for both Customs and industry by eliminating an antiquated procedure which is not cost effective."

In Customs Service Decision (C.S.D.) 79–252, Customs held that fungible merchandise commingled in storage or manufacture could be identified on a FIFO basis for purposes of 19 U.S.C. 1313(b) (see also C.S.D.'s 79–301 and 79–448). In C.S.D. 82–35, Customs held that when fungible merchandise belonging to several persons is commingled in storage, each person could identify for drawback purposes his withdrawals on a FIFO basis, considering only his inputs and withdrawals. In C.S.D. 83–54, Customs held that when fungible drawback and non-drawback products were commingled in storage, withdrawals for drawback purposes may be identified against the drawback material in the order of its receipt into the commingled storage facility. In C.S.D. 84–82, Customs held that when fungible drawback and non-drawback input was placed in commingled storage,

withdrawals for drawback purposes could be identified on a "higher-to-lower" basis against the drawback input commingled therein.

In C.S.D. 88–1, Customs held that the use of FIFO for drawback purposes, as provided for in the above-described rulings, required that the products be actually commingled in the same tank and that the FIFO procedure must be applied on a date-by-date basis, as illustrated in the ruling. (Section 484A, Customs and Trade Act of 1990 (Pub. L. 101–382; 104 Stat. 629, 707; 19 U.S.C. 1313(p)), provided alternative monthly accounting procedures for certain crude petroleum and petroleum derivative products in certain conditions. In its directive implementing this statute (Customs Directive 3740–006, March 17, 1992), Customs stated that the legal principles set forth in C.S.D. 88–1 would continue to apply to articles not provided for in § 484A.)

In 1965 (see T.D. 56487, published in the **Federal Register** on September 25, 1965 (30 FR 12280)), Customs published a general drawback rate for substitution manufacturing drawback under 19 U.S.C. 1313(b) for crude petroleum and petroleum derivatives. General rates are manufacturing drawback contracts describing standardized procedures (e.g., steel, provided for in T.D. 81–74, or piece goods, provided for in T.D. 83–73). Because the procedures covered in general rates are standardized, a manufacturer or producer who can comply with the terms and conditions of the general rate may seek application of the general rate to its operations through a Customs regional office instead of having to apply for and obtain approval from Customs headquarters, as is true of specific substitution manufacturing drawback contracts (see 19 CFR Part 191, Subparts D and B, respectively). Because of its extreme complexity, the general drawback rate for crude petroleum and petroleum derivatives is an exception to this practice, requiring application to Customs headquarters for approval.

T.D. 56487 promulgated the general drawback rate for crude petroleum and petroleum derivatives by adding it to the Customs Regulations then pertaining to drawback (19 CFR 22.6(g–1); § 22.6 then contained the general drawback rates). (When Part 22 of the Customs Regulations was revised into Part 191, the general drawback rates were not included in the revised regulations, as not being of sufficient general applicability for such inclusion. Thereafter, general drawback rates were published separately as T.D.'s. The general drawback rate for crude petroleum and petroleum derivatives, formerly in 19 CFR 22.6(g–1), was published, without substantive change, as T.D. 84–49.) T.D. 56487 provided for a monthly period of manufacture, unless a different period was authorized. T.D. 56487 was issued after very thorough review by the government and after the public was given an opportunity to comment (see Notice of Proposed Rule Making, published in the **Federal Register** on June 16, 1965 (30 FR 7756)).

In the Notice of Proposed Rule Making for T.D. 56487, the reasons given for promulgation of the general drawback rate were to meet the complex problems of refiners who produce large groups of widely diversified petroleum products and to provide a better basis for the proper allowance of drawback on such products, and to ensure compliance with the applicable statutory provision (19 U.S.C. 1313(b)). Although the T.D. permitted the designation for drawback of imported crude petroleum or petroleum derivatives used at one refinery of a refiner as the basis for the allowance of drawback on petroleum products manufactured or produced at another refinery of the same refiner, the T.D. applied to manufacture or production of the latter, or substitute merchandise, on a refinery-by-refinery basis.

A basic feature of T.D. 56487 was that refiners could, at their option, attribute to designated imported crude petroleum or petroleum derivatives a quantity of an exported petroleum product in excess of the quantity of that petroleum product actually produced from either the designated imported crude petroleum or petroleum derivative or the crude petroleum or petroleum derivative that was substituted for the designated import. This feature, called "producibility," permits drawback to be claimed on a given quantity of designated imported crude petroleum or petroleum derivatives up to the quantity of an exported petroleum product which *could* have been produced from the designated imported crude petroleum or petroleum derivatives. Under the producibility concept, as provided for in T.D. 56487, a refiner is not required to establish that the exported articles were actually produced from the substituted crude petroleum or petroleum derivatives; the refiner need only show that the exported articles *could* have been produced from the designated imported crude petroleum or petroleum derivative.

The application of the producibility concept to petroleum refinery operations is illustrated in the following example, quoted from the ruling published as T.D. 78–419.

Suppose that 100 barrels of crude petroleum are refined into 10 products in equal amounts, including 10 barrels of motor gasoline. One half of the crude is imported duty-paid, which can be designated for drawback, and one half (50 barrels) is domestic of the same kind and quality. Only the motor gasoline is exported.

The production standards for petroleum, unlike those for most chemicals, are subject to variation at the election of the refiner. In other words, the refiner could have produced 91 barrels of motor gasoline from 100 barrels of crude [i.e. Class III], had he wanted to.

To require the refiner to designate a quantity of imported crude sufficient to have produced concurrently each product actually produced, whether or not exported, would either require him to designate more than the 50 barrels of imported crude that was used, or to accept drawback on only 5 barrels (one-half) of the total quantity of motor gasoline exported.

On the other hand, disregarding the nonexported products for the purpose of determining the quantity of imported crude to designate, it is clear that up to 91 percent of the 50 barrels of imported crude could have been refined into motor gasoline. Therefore, the refiner would have to designate only slightly more than 10 barrels of imported crude to cover all of the motor gasoline exported. This is the Treasury Department position.

The quantity of a given petroleum product which could have been produced from a given quantity of crude petroleum or petroleum derivative is determined on the basis of "Industry Standards of Potential Production on a Practical Operating Basis." These standards were published in T.D. 66–16. The standards listed the quantity of 17 petroleum products which could have been produced from four classes of crude petroleum and 12 petroleum derivatives (e.g., the producibility percentages for class III crude petroleum for motor gasoline and aviation gasoline are 91 and 40 respectively, meaning that 91 gallons of motor gasoline or 40 gallons of aviation gasoline could be produced from 100 gallons of class III crude petroleum).

In addition to establishing procedures for the use of the concept of producibility for the refining of crude petroleum and petroleum derivatives, T.D. 56487 divided crude petroleum and petroleum derivatives into classes for purposes of determining same kind and quality. (In order to claim drawback under 19 U.S.C. 1313(b) on the exportation of articles manufactured from domestic or other merchandise substituted for designated imported merchandise, the designated imported merchandise and the substituted merchandise must be of the same kind and quality.) Four classes, based on API gravity, were established. Crude petroleum in any one class would be

considered as being of the same kind and quality as any other crude petroleum included in the same class and any named petroleum derivative in any class would be considered as being of the same kind and quality as the same named derivative in the same class. As stated above, under T.D. 56487, a refiner was not required to establish that *the* crude petroleum or petroleum derivative used to produce the exported article was of the same kind and quality as the designated imported crude petroleum or petroleum derivative; the refiner was required to establish that this *could* have been the case. (I.e., If a refiner used different classes of crude petroleum during a production period subject to different standards of producibility, the refiner was required to establish only that a sufficient quantity, taking into consideration the applicable standards of producibility, of crude petroleum of the same class as the designated imported crude petroleum was used in the refinery during the period; not that it was actually used for the production of exported article.)

Distribution of drawback among the products produced during a production period under T.D. 56487 is based on the relative values of all products manufactured or produced during the production period, as of the time of separation of the products. (The time of separation of the products is considered to be the monthly period of production.) Relative values are stated in terms of drawback factors, which attach to each of the products manufactured or produced during the production period. (E.g., If, under T.D. 56487, crude petroleum was used to produce 50 barrels of motor gasoline valued at $30 per barrel, 25 barrels of distillate oils valued at $20 per barrel, and 25 barrels of all other petrochemical products valued at $80 per barrel, the drawback factors would be: motor gasoline—.75; residual oils—.5; and all other petrochemical products—2.) The quantity of crude petroleum which may be designated for the exportation of a particular product is determined by multiplying the quantity of the article exported by the drawback factor. (E.g., In the above example if 10 barrels of motor gasoline were exported, 7.5 barrels of crude petroleum could be designated; if 10 barrels of petrochemical products were exported, 20 barrels of crude petroleum could be designated.)

T.D. 56487 emphasized the statutory requirement that the total amount of drawback allowed may never exceed 99 percent of the duty paid on the designated imported merchandise. To ensure compliance with this requirement, the T.D. provided that the exportation of a given quantity of a manufactured product affords a proper basis for the allowance of drawback only to the extent that the product could have been produced in that quantity (together with the quantities of related products produced concurrently) from the designated imported crude petroleum or petroleum derivatives. The T.D. provided that this requirement meant that such concurrent production must be practicably possible by ordinary manufacturing techniques.

T.D. 56487 contained explicit accounting procedures for manufactured articles. When the inventory of a particular product contained product with different drawback factors (e.g., if the inventory of motor gasoline was from more than one month's production, each month's quantity could have a different drawback factor), withdrawals from the inventory for exports were required to be "[f]rom lowest [factor] on hand", withdrawals for drawback deliveries (i.e., for further manufacture resulting in a product on which drawback could be claimed) were required to be "[from] lowest on hand after exports are deducted", and withdrawals for domestic (non-drawback) shipments were required to be "[f]rom earliest on hand after [withdrawals for export and drawback deliveries] are deducted."

The basis for the above accounting procedures is explained in the Notice of Proposed Rule Making for T.D. 56487, in which it is stated, "[t]he total amount of drawback allowable * * * shall be computed by multiplying the quantity of product exported by the drawback factor for that product, *with due consideration for the 'lower-to-higher' principle established in [19 CFR 22.4(f)].*" (Emphasis added.)

Customs has been requested to amend T.D. 84–49 (as stated above, when the Customs Regulations pertaining to drawback were revised in 1983, the general drawback rate for crude petroleum and petroleum derivatives was not included in the revised regulations but was subsequently published, without substantive change from its initial publication as T.D. 56487, as T.D. 84–49) to permit the accounting for withdrawals for export and for drawback deliveries from the inventory of a particular product containing product with different drawback factors on the basis of FIFO or higher-to-lower. The basis for this request is stated to be that when T.D. 56487 was published, Customs permitted such accounting only on a lower-to-higher basis but now other bases of accounting, including FIFO and higher-to-lower are permitted.

It is Customs position that the above-described rationale for amending T.D. 84–49 to permit the accounting on a FIFO basis in the described situation has merit (although, in the interest of administrative simplicity, Customs believes that the order of such withdrawals should continue to be the same; i.e., first exports, then drawback deliveries, then domestic shipments). The reasons given for the introduction of FIFO to accounting procedures for drawback still apply; i.e., that FIFO is less difficult to administer and is consistent with commercial accounting procedures (see, e.g., *Miller's Comprehensive GAAP Guide* (1985), page 2401 *et seq.*, Inventory Pricing and Methods). The basis for requiring use of the lower-to-higher accounting procedure in this situation was that that was the only accounting procedure permitted to be used for drawback at the time. Customs position has now changed. Furthermore, we note that under T.D. 84–49, there are procedures guaranteeing that the total amount of drawback allowed may never exceed 99 percent of the duty paid on the designated imported merchandise, as required by the drawback law.

However, it is Customs position that T.D. 84–49 should not be amended to permit the accounting on a higher-to-lower basis and, furthermore, that C.S.D. 84–82, the only published Customs ruling permitting higher-to-lower accounting for drawback purposes, as well as any unpublished Customs rulings to the same effect, should be revoked. As described above, when the Customs Regulations on drawback were revised in 1983 and the use of FIFO, or any other accounting procedure approved by Customs, was authorized, the applicable provision (19 CFR 191.22(c)) was modified from that proposed in the Notice of Proposed Rule Making for the revision. In the Notice of Proposed Rule Making, only FIFO would have been permitted. In the Final Revision it was explained that this change was in response to a comment which was found to have merit, and therefore other accounting procedures could be used. Illustrations of these other accounting procedures were given. The illustrative accounting procedures ("low-to-high", "identification", and "blanket identification") are either as conservative as the lower-to-higher procedure then permitted or consist of direct identification without recourse to an accounting system.

Each of the illustrative accounting procedures referred to in the Final Revision of the Customs Regulations on

drawback is either revenue neutral or favors the Government. When a drawback claimant uses an accounting system to identify merchandise or articles for drawback purposes, it does so for its own convenience (i.e., to avoid having to physically identify the merchandise or articles). It is Customs position that any accounting procedure authorized under 19 CFR 191.22(c) must be revenue neutral or favorable to the Government. Furthermore, it is Customs position that any such authorized accounting procedure must be consistent with commercial accounting procedures, as is true of FIFO, must be consistent with the accounting procedures generally used by the drawback claimant, and must be consistent with ease of administration.

**Authority**

This notice is published in accordance with §§ 177.9 and 177.10, Customs Regulations (19 CFR 177.9, 177.10).

**Comments**

Before adopting this proposed change in position, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 103.11(b)), on regular business days between the hours of 9 and 4:30 p.m. at the Regulations Branch, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

**George J. Weise,**

*Commissioner of Customs.*

Approved: June 9, 1994

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 94–15527 Filed 6–27–94; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF VETERANS AFFAIRS

### Veterans Health Administration

### Advisory Committee for Cooperative Studies, Health Services, and Rehabilitation Research and Development Subcommittee on Career Development for Health Services Research and Development Service; Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Pub. L. 92–463, that a meeting of the Advisory Committee for Cooperative Studies, Health Services and Rehabilitation Research and Development Subcommittee on Career Development for Health Services Research and Development will be held at the Boston VA Medical Center, 150 South Huntington Avenue, Boston, Massachusetts, July 18 through July 19, 1994. The session on July 18, 1994, is scheduled to begin at 12 p.m. and end at 5 p.m. The session on July 19 is scheduled to begin at 8 a.m. and end at 3 p.m. The purpose of the meeting is to review Career Development Award applications submitted by VA clinicians interested in conducting health services research in VA. Applications are assessed based on research accomplishments, contributions to VA, and plans for pursuing a career in VA health services research. Recommendations for awards are prepared for the Associate Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the July 18 session for approximately one-half hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of the applicants' qualifications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Bill Judy, Review Program Manager (12B3), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Ave., Washington, DC 20420 (phone: 202–523–7425) at least five days before the meeting.

Dated: June 14, 1994.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 94–15575 Filed 6–27–94; 8:45 am]

BILLING CODE 8320–01–M

### Wage Committee; Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, July 13, 1994, at 2 p.m.
Wednesday, July 27, 1994, at 2 p.m.
Wednesday, August 10, 1994, at 2 p.m.
Wednesday, August 24, 1994, at 2 p.m.
Wednesday, September 7, 1994, at 2 p.m.
Wednesday, September 21, 1994, at 2 p.m.

The meetings will be held in Room 1225, Department of Veterans Affairs, Tech World Plaza, 801 I Street, NW, Washington, DC 20001.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1225, 801 I Street, NW, Washington, DC 20001.

Dated: June 20, 1994.

By Director of the Secretary:

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 94–15576 Filed 6–27–94; 8:45 am]

BILLING CODE 8320–01–M

### Veterans' Advisory Committee on Environmental Hazards; Notice of Availability of Radiation Risk Activities Report

Under Section 10(d) of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Radiation Risk Activities Report of the Department of Veterans Affairs' Veterans' Advisory Committee on Environmental Hazards has been issued. The report, mandated by Public Law 102–578, Veterans' Radiation Exposure Amendments of 1992, summarizes activities other than service with the occupation forces of Hiroshima or Nagasaki, Japan, or participation in an atmospheric nuclear test, which resulted in exposure of veterans to ionizing radiation before January 1, 1970. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540; and

Department of Veterans Affairs, Office of the General Counsel, Techworld, Room 1062, 801 Eye Street, NW., Washington, DC 20420.

Dated: June 20, 1994.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 94–15577 Filed 6–27–94; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 123
Tuesday, June 28, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**U.S. COMMISSION ON CIVIL RIGHTS**

**DATE AND TIME:** Friday, July 1, 1994.

**PLACE:** U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

**STATUS:** Open to the Public.

**Agenda**

I. Approval of Agenda
II. Approval of Minutes of June Meeting
III. Announcements

*10:00 a.m. TV Media Briefing*

IV. Staff Director's Report
V. State Advisory Committee Report
- Resolving Intergroup Conflicts in New York City

VI. FY 1996 Project Plans
VII. New York Hearing Update
VIII. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116) at least five (5) working days before the scheduled date of the hearing.

**CONTACT PERSON FOR FURTHER INFORMATION:** Barbara Brooks, Press and Communications (202) 376–8312.

Dated: June 22, 1994.

**Emma Monroig,**

*Solicitor.*

[FR Doc. 94–15733 Filed 6–24–94; 9:59 am]

**BILLING CODE 6335–01–M**

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 2:00 p.m., Wednesday, June 29, 1994.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTER TO BE CONSIDERED:**

1. Gas-Fired Water Heaters

The Commission will consider options for Commission action to address the risk that gas-fired water heaters will ignite vapors from flammable liquids that are present in the home.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 23, 1994.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 94–15807 Filed 6–24–94; 3:43 pm]

**BILLING CODE 6355–01–M**

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** Thursday, June 30, 1994.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTER TO BE CONSIDERED:**

**1. Baby Walkers**

The Commission will consider options for Commission action to address the risks of injury associated with baby walkers.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 23, 1994.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 94–15808 Filed 6–24–94; 8:45 am]

**BILLING CODE 6355–01–M**

**FEDERAL ENERGY REGULATORY COMMISSION**

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

**DATE AND TIME:** June 29, 1994, 10:00 a.m.

**PLACE:** 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note**—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**Consent Agenda—Hydro, 612th Meeting—June 29, 1994, Regular Meeting (10:00 a.m.)**

CAH–1.
Project No. 460–006, City of Tacoma, Washington
CAH–2.
Project No. 2420–004, PacifiCorp Electric Operations
CAH–3.
Project No. 4357–013, Clifton Hydro-Power Limited Partnership
CAH–4.
Project No. 9401–030, Halecrest Company
CAH–5.
Project No. 10615–003, Wolverine Power Supply Cooperative, Inc.
CAH–6.
Project No. 2376–002, Appalachian Power Company
CAH–7.
Project Nos. 2570–018, 019 and 020, Ohio Power Company
CAH–8.
Project No. 4515–010, E. R. Jacobson

**Consent Agenda—Electric**

CAE–1.
Docket No. EL92–33–001, Barton Village, Inc., Enosburg Falls Water & Light Company, the Village of Orleans and the Village of Swanton, Vermont v. Citizens Utilities Company
Docket Nos. EL92–33–002, ER94–1209–000 and ER94–1210–000, Citizens Utilities Company
CAE–2.
Docket No. ER94–1043–000, Virginia Electric and Power Company
CAE–3.
Docket No. ER94–1171–000, Arizona Public Service Company
CAE–4.
Docket No. ER94–1040–000, Florida Power Corporation
CAE–5.
Docket No. ER94–1261–000, Carolina Power & Light Company
CAE–6.
Docket Nos. ER92–850–003, 004, 005 and 006, Louis Dreyfus Electric Power, Inc.
CAE–7.
Docket No. ER93–700–000, PSI Energy, Inc.
CAE–8.
Docket Nos. TX94–1–000 and 001, Minnesota Municipal Power Agency v Northern States Power Company
CAE–9.
Docket No. ER94–306–001, Keystone Energy Service Company, L.P.
CAE–10.
Docket No. ER94–1045–001, Kansas City Power & Light Company
CAE–11.

Docket No. EL94–39–001, City of Orangeburg, South Carolina v. South Carolina Electric & Gas Company
CAE–12.
Docket Nos. TX93–4–002 and EL93–51–002, Florida Municipal Power Agency v. Florida Power & Light Company
CAE–13.
Omitted
CAE–14.
Docket No. EG94–29–001, Desarrollo Petacalco, S. De R.L. De C.V.
CAE–15.
Docket No. EG94–30–001, SEI Holdings V. Inc.
CAE–16.
Docket No. ER90–144–011, Northeast Utilities Service Company (Re: Public Service Company of New Hampshire)
CAE–17.
Docket No. EG94–63–000, B+G Vermogensverwaltungs Gmbh & Company KG
CAE–18.
Docket No. EG94–64–000, B+I Vermogensverwaltungs GmbH
CAE–19.
Docket No. EG94–62–000, EI Power, Inc.
CAE–20.
Omitted
CAE–21.
Docket No. ER92–280–002, Public Service Electric & Gas Company
CAE–22.
Omitted
CAE–23.
Docket Nos. EL94–45–000 and QF88–84–005, LG&E.—Westmoreland Southhampton

**Consent Agenda—Miscellaneous**

CAM–1.
Docket No. RM94–16–000, Delegations to the Chief Accountant and the Chief Administrative Law Judge

**Consent Agenda—Oil and Gas**

CAG–1.
Docket No. RP94–262–000, Texas Eastern Transmission Corporation
CAG–2.
Docket No. RP94–263–000, Texas Eastern Transmission Corporation
CAG–3.
Docket Nos. RP94–264–000, 001, RP94–67–011, RP94–165–004 and RP94–269–000, Southern Natural Gas Company
CAG–4.
Docket No. RP94–266–000, ANR Pipeline Company
CAG–5.
Docket No. RP94–271–000, East Tennessee Natural Gas Company
CAG–6.
Docket Nos. RP94–238–000 and RP93–172–005, Panhandle Eastern Pipe Line Company
CAG–7.
Docket No. RP94–250–000, Northwest Alaskan Pipeline Company
CAG–8.
Omitted
CAG–9.
Docket No. RP94–260–000, Natural Gas Pipeline Company of America
CAG–10.
Docket No. RP94–267–000, Wyoming Interstate Company, Ltd.
CAG–11.
Docket Nos. RP94–274–000 and RP94–275–000, Northern Natural Gas Company
CAG–12.
Docket No. RP94–282–000, Paiute Pipeline Company
CAG–13.
Docket No. TM94–3–86–000, Pacific Gas Transmission Company
CAG–14.
Docket No. TM94–4–32–000, Colorado Interstate Gas Company
CAG–15.
Docket No. TM94–5–49–000, Williston Basin Interstate Pipeline Company
CAG–16.
Docket No. RP94–270–000, Equitrans, Inc.
CAG–17.
Docket No. RP94–261–000, Tennessee Gas Pipeline Company
CAG–18.
Omitted
CAG–19.
Docket Nos. RP94–80–000 and 001, National Fuel Gas Supply Corporation
CAG–20.
Docket No. RP94–113–000, Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company Docket No. CP94–369–000, Columbia Gas Transmission Corporation
CAG–21.
Docket No. RP94–176–000, Tennessee Gas Pipeline Company
CAG–22.
Docket No. RP94–186–002, Questar Pipeline Company
CAG–23.
Docket No. RP94–248–000, K N Interstate Gas Transmission Company
CAG–24.
Docket Nos. RP93–14–017, 018, RP90–22–000, RP87–14–000, RP86–41–000, RS92–28–000, RP93–126–000, RP94–55–000, RP94–110–000, CP88–167–000 and CP90–643–000, Algonquin Gas Transmission Company
CAG–25.
Docket Nos. RP94–201–001, RP88–228–043 and RP94–175–001, Tennessee Gas Pipeline Company
CAG–26.
Docket No. RP93–147–004, Tennessee Gas Pipeline Company
CAG–27.
Docket Nos. RP94–197–001 and RP93–151–012, Tennessee Gas Pipeline Company
CAG–28.
Docket Nos. RP89–183–057, 052, RP93–170–002 and 001, Williams Natural Gas Company
CAG–29.
Docket No. AC94–40–001, Mississippi River Transmission Corporation
CAG–30.
Docket No. AC94–48–001, Panhandle Eastern Pipe Line Company
CAG–31.
Docket No. AC94–49–001, Trunkline Gas Company
CAG–32.
Docket No. GP94–11–001, Oklahoma Corporation Commission, Oil and Gas Conservation Division
CAG–33.
Docket Nos. RP89–34–010, RP89–257–003 and RP90–2–013, Williston Basin Interstate Pipeline Company
CAG–34.
Docket Nos. RP91–47–006, TM91–4–16–002, TM91–5–16–001, TM92–2–16–002, TM92–5–16–001 and TM94–4–16–001, National Fuel Gas Supply Corporation
CAG–35.
Docket No. RP93–168–001, LFC Gas Company v. Northwest Pipeline Corporation
Docket No. RP93–174–002, Northwest Pipeline Corporation
CAG–36.
Docket No. RP94–189–002, Northwest Pipeline Corporation
CAG–37.
Docket Nos. RP92–200–001 and RP92–225–001, Texas Eastern Transmission Corporation
CAG–38.
Docket Nos. RP88–197–013 and RP88–236–007, Williston Basin Interstate Pipeline Company
CAG–39.
Docket Nos. RP94–105–002 and 003, Ozark Gas Transmission System
CAG–40.
Docket Nos. RP91–56–002, TM94–4–49–000 and 001, Williston Basin Interstate Pipeline Company
CAG–41.
Omitted
CAG–42.
Docket Nos. RP94–72–001 and FA92–59–002, Iroquois Gas Transmission System, L.P.
CAG–43.
Docket No. TM94–2–37–002, Northwest Pipeline Corporation
CAG–44.
Omitted
CAG–45.
Docket No. RO93–3–000, Gear Petroleum Company, Inc.
CAG–46.
Docket No. RO87–24–000, National Hydrocarbons Group, Inc., National Hydrocarbons Resources Corp., National Hydrocarbons, Inc., Donald P. Lemoine, Warren E. Settegast, Jr. and Gregory P. Dillon
CAG–47.
Docket Nos. RS92–13–015, 000, 013, 014, RP94–48–008, 007 and 008, Williston Basin Interstate Pipeline Company
CAG–48.
Docket Nos. RS92–1–009 and 010, ANR Pipeline Company
CAG–49.
Docket Nos. RS92–23–022, 024, RP91–203–044 and RP92–132–039, Tennessee Gas Pipeline Company
CAG–50.
Docket No. CP92–165–006, Texas Eastern Transmission Corporation
CAG–51.
Docket Nos. CP91–780–004 and RP92–112–002, Northwest Pipeline Corporation
CAG–52.

Docket No. CP93–141–003, Iroquois Gas Transmission System, L.P.
Docket No. CP93–145–002, Tennessee Gas Pipeline Company
CAG–53.
Docket No. CP94–166–001, Viosca Knoll Gathering System
CAG–54.
Docket No. CP93–616–000, Tennessee Gas Pipeline Company
CAG–55.
Docket No. CP93–706–000, Questar Pipeline Company
CAG–56.
Docket No. CP94–109–000, Transcontinental Gas Pipe Line Corporation
CAG–57.
Docket No. CP94–161–000, Avoca Natural Gas Storage
CAG–58.
Docket Nos. CP93–493–000 and 001, Ozark Gas Transmission System
CAG–59.
Docket No. CP93–548–000, Wallkill Transport Company, L.P.
CAG–60.
Docket No. CP93–716–000, HNG Sulphur Mines Company
CAG–61. Docket No. CP94–87–000, Great Lakes Gas Transmission Limited Partnership
CAG–62.
Docket No. CP94–143–000, Great Lakes Gas Transmission Limited Partnership
CAG–63.
Docket Nos. CP90–454–002, 004, 005, CP94–358–000 and MT94–3–000, Midwest Gas Storage Inc.
CAG–64.
Docket No. CP93–732–000, Murphy Exploration and Production Company
Docket No. CP93–733–000, Texas Eastern Transmission Corporation
CAG–65.
Docket No. CP94–82–000, National Fuel Gas Supply Corporation
CAG–66.
Omitted
CAG–67.
Docket No. CP94–306–000, Texas Utilities Fuel Company
CAG–68.
Docket No. CP94–332–000, Columbia Gas Transmission Corporation
CAG–69.
Docket No. CP90–1391–006, Arcadian Corporation v. Southern Natural Gas Company
CAG–70.
Docket No. CP91–2069–001, NorAM Gas Transmission Company
CAG–71.
Docket No. RM93–4–003, Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations
CAG–72.
Docket No. CP92–606–002, Great Lakes Gas Transmission Limited Partnership

**Hydro Agenda**

H–1.
Omitted
H–2.
4Omitted

**Electric Agenda**

E–1.
Docket No. TX94–2–000, El Paso Electric Company and Central and South West Services, Inc., as agent for Public Service Company of Oklahoma, West Texas Utilities Company, Southwestern Electric Power Company and Central Power and Light Company v. Southwestern Public Service Company. Order on request for transmission service.
E–2.
Docket No. EC94–7–000, El Paso Electric Company and Central and South West Services, Inc.
Docket No. ER94–898–000, Central and South West Services, Inc. Merger and amendment to system agreement.
E–3.
Docket No. TX93–2–001, City of Bedford, Virginia, City of Danville, Virginia, City of Martinsville, Virginia, Town of Richlands, Virginia and Blue Ridge Power Agency. Order on request for transmission service.
E–4.
Docket No. EL94–59–000, City of Bedford, Virginia, City of Danville, Virginia, City of Martinsville, Virginia, Town of Richlands, Virginia and Blue Ridge Power Agency v. Appalachian Power Company. Order on complaint.
E–5.
Docket No. RM94–7–000, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities. Notice of proposed rulemaking.

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR–1.
Reserved

*II. Restructuring Matters*

RS–1.
Reserved

*III. Pipeline Certificate Matters*

PC–1.
Reserved

Dated: June 22, 1994.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–15801 Filed 6–24–94; 2:38 pm]

BILLING CODE 6717–01–P

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## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 12:00 noon, Friday, July 1, 1994.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551 .

**STATUS: CLOSED.**

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 23, 1994

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94–15716 Filed 6–24–94; 9:16 am]

BILLING CODE 6210–01–P

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## NUCLEAR REGULATORY COMMISSION

**DATE:** Weeks of June 27, July 4, 11 and 18, 1994.

**PLACE:** Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of June 27—Tentative**

There are no meetings scheduled for the Week of June 27.

**Week of July 4—Tentative**

*Friday July 8*

10:00 a.m.
Protocol For Study Of Thyroid Disease In Belarus as a Result Of The Chernobyl Accident (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of July 11—Tentative**

*Tuesday, July 12*

2:00 p.m.
Periodic Briefing on EEO Program (Public Meeting)
Contact: Vandy Miller, 301–492–4665)

*Wednesday, July 13*

10:00 a.m.
Briefing on Decommissioning Process (Public Meeting)
Contact: David Futoma, 301–504–1621)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

*Thursday, July 14*

2:00 p.m.
Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)
(Contact: Christopher Grimes, 301–504–1161)

*Friday, July 15*

10:00 a.m.
Briefing on Information Technology Strategic Plan (Public Meeting)

(Contact: Francine Goldberg, 301–415–7460)

**Week of July 18—Tentative**

*Tuesday, July 19*

10:00 a.m.

Briefing On Fuel Cycle and Waste Management Activities In France (Public Meeting)

*Wednesday, July 20*

11:30 a.m.

Affirmation/Discussion And Vote (Public Meeting)

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill—(301) 504–1661.

Dated: June 24, 1994.

**Andrew L. Bates**

*Chief Operations Branch, Office of the Secretary.*

[FR Doc. 94–15746 Filed 6–24–94; 8:45 am]

**BILLING CODE 7590–01–M**

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**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 9:00 a.m. on Tuesday, July 12, 1994, in Boston, Massachusetts. The meeting is open to the public and will be held at the Boston Harbor Hotel, 70 Rowes Wharf, in the John Foster Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, July 11, 1994, but it will consist entirely of briefings and is not open to the public.

**Agenda**

*Tuesday Session*

*July 12—9:00 a.m. (Open)*

1. Minutes of the Previous Meeting, June 6–7, 1994.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon).
3. Report on Mail Forwarding. (Arthur I. Porwick, Manager, Operations Programs).
4. Report on the Employee Assistance Program. (John G. Kurutz, Manager, Employee Assistance Program).
5. Ninety-Day Status Report on Chicago Mail Service. (William J. Good, Manager, Great Lakes Area).
6. Report on the Northeast Area. (Nancy George and J. Buford White, Managers, Northeast Area).
7. Capital Investments.
   a. 120 Remote Bar Coding Systems. (William J. Dowling, Vice President, Engineering).
   b. Kalamazoo, Michigan, Processing & Distribution Center. (Thomas K. Ranft, Manager, Great Lakes Area).
7. Tentative Agenda for the August 1–2, 1994, meeting in Washington, D.C.

**David F. Harris,**

*Secretary.*

[FR Doc. 94–15822 Filed 6–24–94; 3:44 pm]

**BILLING CODE 7710–12–M**

# Corrections

Federal Register
Vol. 59, No. 123
Tuesday, June 28, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF EDUCATION

### Direct Grant Programs and Fellowship Programs

*Correction*

In notice document 94-14026 beginning on page 30189 in the issue of Friday, June 10, 1994 make the following corrections:

1. On page 30189, in the part cover, in the last line, "Fiscal Year 1994" should read "Fiscal Year 1995".

2. On page 30190, in the third column, in the fourth full paragraph, "Within the next month the Secretary intends to publish in the **Federal Register**" should read "Elsewhere in this issue of the **Federal Register**, the Secretary is publishing".

3. On page 30192, in Chart 4, in the first column, under entry "84.055A", in the last line, "part a" should read "Part A".

4. On page 30193, in Chart 4, under entry "84.120", in the last column, "....." should read "1".

5. On page 30197, in the first column, under "84.220A", "*Program Authority:* 20 U.S.C. 1130-1." add the following text:

*84.202A Grants to Institutions and Consortia to Encourage Women and Minority Participation in Graduate Education Program*

*Purpose of Program:* To provide grants to enable institutions of higher education to (1) recruit talented undergraduate students who demonstrate financial need and are individuals from minority groups or women underrepresented in graduate education; and (2) provide students with effective preparation for graduate study.

*Eligible Applicants:* Institutions of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended; and consortia of institutions of higher education.

*Applicable Regulations:* The Education Department GeneralAdministrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210(a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

*Plan of Operation.* (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

*Project Period:* Six weeks to 24 months. All student activities must begin during summer 1995.

BILLING CODE 1505-01-D

Federal Register

Tuesday
June 28, 1994

Part II

# Department of Education

34 CFR Part 682
Federal Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB97

## Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs. The final regulations incorporate statutory changes made to the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1992 (the 1992 Amendments), self-implementing provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA), and the Higher Education Technical Amendments of 1993 (1993 Technical Amendments). Regulations needed to implement other OBRA amendments and the 1993 Technical Amendments will be published separately. The final regulations also reflect various policy initiatives intended to improve program administration.

EFFECTIVE DATE: Pursuant to section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)), these regulations take effect July 1, 1995, with the exception of §§ 682.401, 682.405, and 682.409. These sections will become effective on July 1, 1995, or after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, whichever is later. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia Beavan, Senior Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Stafford, SLS, and PLUS Loan programs provide loans to eligible student or parent borrowers who might otherwise be unable to finance the costs of postsecondary education. The Consolidation Loan Program gives borrowers an opportunity to consolidate loans made under the Stafford loan, Perkins (formerly National Direct Student Loan), Auxiliary Loans to Assist Students (as in effect before October 17, 1986), PLUS, SLS, Health Professions Student Loan (HPSL), and the Higher Education Assistance Loan (HEAL) programs.

On March 16, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL program in the **Federal Register** (59 FR 12484). Those proposed regulations were developed in compliance with section 492 of the 1992 Amendments (Pub. L. 102–325), mandating that the regulations be submitted to a negotiated rulemaking process. Regional meetings were held during September 1992 to obtain public involvement in the development of the proposed regulations and a negotiated rulemaking process was conducted during January and February 1993. The NPRM published on March 16, 1994 provided an indepth discussion of those areas where the negotiators reached a consensus as reflected in those regulations.

These regulations improve the efficiency of the Federal student aid programs, and, by so doing, improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals. The student aid programs also enable current and future workers to have the opportunity to acquire both basic and technologically advanced skills needed for today's and tomorrow's workplace. They provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

### Substantive Revisions to the Notice of Proposed Rulemaking

*Subpart B—General Provisions*

Section 682.200 Definitions

- The Secretary has revised the definition of "disposable income" to exclude: (1) child support or alimony payments that are made under a court order or in accordance with a written legally enforceable agreement and (2) the amounts withheld under wage garnishment.
- The Secretary has revised the definition of "estimated financial assistance" to exclude the amount of expected Federal Perkins loan or Federal Work-study aid if the borrower did not apply for those funds.
- The Secretary has revised the definition of "repayment period" as it applies to the SLS Program to reflect the borrower's option to delay repayment for a period consistent with the grace period in the Stafford Loan Program.
- The Secretary has revised the definition of "satisfactory repayment arrangement" to provide that for purposes of consolidating a defaulted loan, the borrower will be required to make three consecutive reasonable and affordable full monthly voluntary payments rather than six as provided in the NPRM. The definition has been also revised to specify that an on-time payment is one received by a guaranty agency or its agent within 15 days of the scheduled due date.

Section 682.204 Maximum Loan Amounts

- The Secretary has revised the regulations to reflect the changes to the proration of loan amounts made by the 1993 Technical Amendments (Pub. L. 103–208).

Section 682.207 Due Diligence in Disbursing a Loan

- The Secretary has revised the regulations to permit lenders to disburse loans proceeds by use of a "master check" for a number of borrowers in addition to an individual check or Electronic Funds Transfer for each borrower.

*Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency*

Section 682.401 Basic Program Agreement

- The Secretary has revised the regulations to delete the proposed regulations reflecting limitation of lender-of-last-resort (LLR) services in light of the deletion of these requirements by OBRA (Pub. L. 103–66).

Section 682.405 Loan Rehabilitation Agreement

- The Secretary has revised the regulations to allow the guaranty agency to determine if the sale of a loan to a lender is practicable.
- The Secretary has revised the regulations to require guaranty agencies to inform borrowers of the consequences of loan rehabilitation.

Section 682.409 Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

- The Secretary has revised the regulations to require the immediate assignment to the Department of loans held by a guaranty agency if the Secretary deems it necessary to protect the Federal fiscal interest, which includes ensuring an orderly transition from the FFEL program to the Federal Direct Student Loan (FDSL) Program and requiring the collection of unpaid loans owed by Federal employees by Federal salary offset.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

- The Secretary has revised the regulations to require a lender to maintain a copy of the report of the required annual independent audit for not less than five years after the report is issued.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 71 parties submitted comments on the proposed regulations. An analysis of the comments and the changes in the regulations since publication of the NPRM follows. Substantive issues and significant technical changes are discussed under the section of the regulations to which they pertain.

Numerous comments were received to the effect that the proposed regulations did not reflect OBRA or the 1993 Technical Amendments changes and suggested that the Secretary publish a revised notice of proposed rulemaking (NPRM) indicating which sections were superseded by subsequent changes in law. Other than those provisions that are self-implementing and are reflected in this package, the Secretary will issue regulations to implement most substantive provisions from OBRA and the 1993 Technical Amendments in a separate rulemaking package.

The Secretary also notes that technical corrections to the regulations governing the FFEL Program were published in the **Federal Register** on May 17, 1994 (59 FR 25750). Some comments made on the NPRM are addressed by those corrections.

Section 682.100 The Federal Family Education Loan Programs

Section 682.100(a)(2)

*Comments:* Several commenters suggested that the regulations be revised to reflect the elimination of the SLS program by OBRA.

*Discussion:* As the commenters noted, OBRA amended the HEA to end the SLS program effective July 1, 1994. However, the Secretary does not agree with the commenters that references to that program should be removed from these regulations. SLS loans will remain outstanding for many years after the program ends and the regulations need to reflect the requirements relating to those loans. However, the Secretary revises the regulations to make reference to the SLS program as in effect prior to July 1, 1994.

*Changes:* The regulations have been revised to refer to the SLS Program as in effect prior to July 1, 1994.

Section 682.100(a)(4)

*Comments:* Commenters suggested that the Secretary delete the reference to parent PLUS loans made on or after October 17, 1986 because the statutory use of this term was ended by the 1993 Technical Amendments. The commenters also suggested that the reference to a requirement that a borrower must consolidate at least $7500 in eligible student loans in the Consolidation Loan Program be deleted to reflect the elimination of this requirement by OBRA. The commenters noted that this change needs to be reflected in other sections of the regulations.

*Discussion:* The Secretary agrees that it is appropriate to reflect these statutory changes. The reference to parent PLUS loans made on or after October 17, 1986 was deleted in the technical corrections package.

*Changes:* The regulations have been revised to reflect the commenters' recommendations.

Section 682.102 Obtaining and Repaying a Loan

Section 682.102(e)(1)

*Comments:* A commenter suggested that the regulations imply that all FFEL debt is forgiven for borrowers in certain areas of teaching or nursing professions or community service.

*Discussion:* The Secretary agrees that the regulations could be interpreted to indicate that the borrower's entire obligation to repay a debt may be forgiven for borrowers performing certain public service. However, section 428J of the HEA only authorizes the Secretary to repay limited portions of certain Federal Stafford loan obligations for individuals who enter certain specified teaching and nursing professions or perform certain other national and community service. Moreover, the loan forgiveness program is a demonstration program which is not currently funded.

*Changes*: The regulations have been revised to reflect the limitation on loan forgiveness for public service. The Secretary notes that regulations reflecting this loan forgiveness demonstration program are being published separately.

Section 682.200 Definitions

Co-Maker

*Comments*: A commenter noted that there is an understanding throughout the FFEL industry that the Department is considering deleting references to "co-maker" and replacing that term with the term "endorser."

*Discussion*: The terms "endorser" and "co-maker" are not synonymous and reflect different legal obligations. The Secretary will not be deleting the reference to co-maker, since it is a term used in the Consolidation Loan Program. "Endorser" is the term used in the Federal PLUS Program for borrowers with adverse credit.

*Changes*: None.

Disposable Income

*Comments*: Some commenters suggested that in the definition of "disposable income" the reference to "any amounts required by law to be withheld" was unclear and recommended further clarification. The commenters noted, for example, that child support payments would qualify under this definition if the payments were made under a divorce settlement rather than a court order. The commenters believed that the Department should not treat borrowers who are subject to garnishment for private debts more favorably than borrowers who are making payments without the need for court intervention.

*Discussion*: The Secretary clarifies that the definition of "disposable income" is that part of a borrower's compensation from an employer and other income from any source that remains after the deduction of amounts required by law to be withheld or any child support or alimony payments that are made under a court order or in accordance with a legally enforceable written agreement. The Secretary has also revised the definition to exclude

payments made under a wage garnishment order.

*Changes*: The definition of "disposable income" has been revised to clarify those payments that may be deducted from the borrower's compensation.

Estimated Financial Assistance

*Comments*: Some commenters expressed the same opinion raised during the negotiations that requiring aid officers to certify the student's estimated eligibility for the Federal Perkins loan or Federal Work-Study program regardless of whether the student applies for the aid is not reasonable. Some commenters believed that it is unjust to penalize a student who declines campus-based awards and that it is inappropriate to have the financial aid administrator determine what is an "acceptable reason" for declining aid.

*Discussion*: After further consideration of the commenter's views, the Secretary agrees that financial aid officers should not be required to certify estimated eligibility for other aid that the student does not apply for or consider as estimated financial assistance aid offered but declined by the student. The Secretary believes that students and their families should have discretion in those areas not prescribed by law and that aid administrators should not be placed in the position of evaluating the merits of a student's reason for declining an award. The Secretary notes that this position is consistent with Federal Direct Student Loan (FDSL) Program.

*Changes*: The regulations have been revised to delete reference to "whether or not the student applied" under paragraph (1)(vii) and paragraph (2) has been added to delete the reference to the declining aid for an acceptable reason.

Nonsubsidized Stafford Loan

*Comments*: A commenter recommended that the definition be revised to reflect that those loans are not eligible for special allowance under § 682.302. The commenter suggested that confusion exists between the terms "unsubsidized Stafford Loan" and "nonsubsidized Stafford Loan" and the revision would clarify the difference.

*Discussion*: The Secretary agrees with the commenter's concern that the regulations need to reflect a clear distinction between the two programs and has revised the regulations to clarify that a nonsubsidized loan does not qualify for special allowance payments.

*Changes*: The regulations have been revised to reflect the comment.

Repayment Period

*Comments*: Some commenters stated that they understood that the Secretary had agreed during the negotiated rulemaking process to permit a 13-year repayment schedule to be established for a borrower who chooses to repay a loan under an income-sensitive repayment schedule. The commenters also suggested that the definition be revised to incorporate the 10-year repayment requirement for variable rate interest loans. The commenters suggested that the 10-year repayment period be extended in the case of an Unsubsidized Stafford Loan.

The commenters also pointed out that during negotiated rulemaking, the Department agreed that in the case of the PLUS and SLS loans with a variable rate, the lender could use the rate at the time the loan entered repayment for purposes of establishing the initial repayment period.

*Discussion*: During the negotiations the Secretary repeatedly made it clear that he had no authority to extend the 10-year repayment period provided by statute. The Secretary did agree to authorize a three-year forbearance period in the case of an income-sensitive repayment schedule and agreed to allow forbearance for a period of up to one year in the case of a variable interest rate loan or graduated repayment schedule.

The Secretary noted that these extensions have the practical effect of extending the repayment period to eleven or thirteen years. The Secretary is developing final regulations to the NPRM published on March 24, 1994 that addresses extending the period of forbearance in cases where the repayment schedule causes the extension of the maximum repayment term of the loan.

The Secretary agrees with the commenters that a lender should use the variable interest rate at the time the loan entered repayment for purposes of establishing the initial repayment period. If the repayment schedule leads to balloon payments or increased payments, and the borrower is unable to make those payments, the lender may grant forbearance, which is excluded from the 10-year period.

*Changes*: None.

*Comments*: A few commenters suggested that the Secretary revise the definition of repayment period to include a cross-reference to § 682.209(d), which requires that the calculation of the repayment period on the loans included in a PLUS or SLS combined repayment schedule be based on the date entered repayment of the most recent included loan.

*Discussion*: The Secretary does not agree that there should be a cross-reference to § 682.209(d). The definition of repayment reflects statutory requirements. The provisions in § 682.209(d) govern specific servicing adjustments necessary in a combined repayment situation and do not modify the basic statutory definition.

*Changes*: None.

*Comments*: Some commenters suggested that the definition of repayment period for SLS be revised to incorporate the borrower's option to delay repayment for a period consistent with the grace period in the Stafford Loan Program. The commenters noted that it should be clear that the delay in the repayment of an SLS is not a period of deferment or forbearance and, as such, special documentation is not required. The commenters also suggested that, since § 682.202(c) permits capitalization during grace periods if provided for in the promissory note (and the addendum and common applications provided for this capitalization), the Secretary should clarify that the lender may capitalize interest during this period.

*Discussion*: The Secretary agrees with the commenters.

*Changes*: The Secretary has revised the definition of repayment period to reflect the borrower's option in the SLS program to delay repayment for a period consistent with the grace period in the Stafford Loan Program. This change is consistent with the change made in § 682.102(e)(3) by the technical corrections. The regulations have also been revised to clarify that the lender may capitalize interest during this period.

Satisfactory Repayment Arrangements

*Comments*: While a number of commenters supported a uniform standard for determining "satisfactory repayment arrangements" for defaulted borrowers, many commenters objected to the use of the proposed uniform standard for all purposes, including reinstatement of Title IV eligibility for defaulted borrowers, rehabilitation of defaulted student loans, and consolidation of defaulted student loans. The commenters believed that use of the proposed standardized definition to qualify a borrower for rehabilitation and consolidation is not in the FFEL Program's best interest. Although the commenters supported a standard definition of the term "satisfactory repayment arrangements", they did not view the proposed definition as adequate. Commenters

believed that it did not adequately recognize the increase in payments once the loan has been rehabilitated or consolidated and that it did not provide for more lenient treatment based on the borrower's individual circumstances.

*Discussion*: The Secretary notes that for purposes of rehabilitation and reinstatement of borrower eligibility, the statutory language does not provide flexibility in establishing the number of payments to regain eligibility or rehabilitate a defaulted loan. In regard to Consolidation loans, the 1993 Technical Amendments amended section 428C of the HEA to refer to "arrangements satisfactory to the holder." The Secretary does not believe that this language was intended to conflict with the statutory requirement in section 432 of the HEA that common procedures be established or the need to ensure that similarly situated borrowers be treated fairly. In light of these considerations and the other comments received on this provision, the Secretary has determined that three consecutive monthly payments will be required for a borrower to consolidate a defaulted loan. The Secretary believes the making of three consecutive monthly payments would allow a borrower to initiate loan consolidation and add the defaulted loan to the consolidation loan within the 180-day provision provided under section 428C(a)(3)(b)(II) of the HEA.

*Changes:* The definition has been revised to distinguish the monthly payments required to establish eligibility for rehabilitating, consolidating or reinstating a defaulted loan.

*Comments:* Some commenters suggested that defining "on-time" to be making a payment within 15 days of the scheduled due date is a new condition that could not have been anticipated by guarantors, servicers and lenders making good faith efforts to program their systems to handle loan rehabilitation. Some commenters suggested that "on-time" be revised to mean a payment made within the calendar month. Other commenters suggested that "on-time" be revised to be a payment received by the guaranty agency or its agent within 15 days. The commenters suggested that a guaranty agency is aware of the date on which payments are received. Using the term "made" could be interpreted to mean the date on which the check was issued by the borrower, or the post-mark date, etc.

*Discussion:* The Secretary believes that it is critically important for borrowers who have previously defaulted and who are entering into satisfactory repayment arrangements with a guaranty agency to establish a pattern of monthly payments that are made timely. For this reason, the Secretary does not agree that an "on-time" payment should be one that is made anytime during the calendar month. The Secretary also notes that the kind of latitude provided by a payment deadline that is anytime within the calendar month will not be available to the borrower if the loan is rehabilitated subsequently and is then serviced by a lender or lender servicer. The Secretary also believes there is sufficient time for guaranty agencies to reprogram their systems prior to the July 1, 1995 effective date of these regulations. The Secretary agrees with the commenters who suggest that the on-time standard should be based on when payments are "received" rather than "made" because a guaranty agency or its agency is aware of this date and the word "made" is open to several different interpretations.

*Changes:* The definition has been revised to read that an on-time payment is one that is received by the guaranty agency or its agent within 15 days of the scheduled due date.

*Comments:* Some commenters suggested that the addition of a definition of "reasonable and affordable" would impact the collection of defaulted loans. The commenters suggested that, based upon the definition provided, each time a guaranty agency changed the monthly payment amount the agency would have to go through the process of determining what is reasonable and affordable. The commenters further suggested that a guaranty agency's collection agents or attorneys will also be subject to conducting the same review whenever they attempt to reach a repayment arrangement.

*Discussion:* The Secretary believes that this definition will not have an impact on the collection of defaulted loans. This provision applies to voluntary payments the borrower is making after the borrower specifically initiates voluntary payment to reinstate eligibility, rehabilitate, or consolidate a defaulted loan. These requirements do not relate to other routine changes the guaranty agency makes to monthly payment amounts.

*Changes:* None.

*Comments:* Commenters suggested that borrowers, whose loans are non-dischargeable and who have not filed a hardship petition, should be allowed to have their Chapter 12 or 13 plan payments count toward regaining eligibility for FFEL loans. The commenters suggested that these borrowers are not attempting to have the loan discharged and, as such, are making voluntary payments.

*Discussion:* The Secretary does not agree with the commenters. The Secretary believes that if a defaulted loan has been included in a bankruptcy petition, then payments received under a court mandated bankruptcy plan are not voluntary payments as required for this purpose.

*Changes:* None.

Write-Off

*Comments:* Some commenters expressed concern that the definition of "write-off" was unclear as to which applicable standards the definition incorporates. Some commenters suggested that the "applicable standards" could be easily read to include the closed school/false certification provision.

*Discussion:* During negotiations, the Secretary agreed with certain negotiators that a uniform standard for "write-off" was desirable for guaranty agencies to use in determining what constitutes a "write-off" in determining whether a borrower has an adverse credit history. The applicable standards referenced in the definition refers to the Write-off and Compromise Procedures which the Department of Education is now developing in consultation with the Department of Treasury, in accordance with the Treasury financial manual and OMB A–129. The Secretary does not consider a loan that has been discharged under section 437(c) of the Act (language in the preamble incorrectly referred to 437(b)) to be considered a write-off nor does the Secretary intend to require borrowers to reaffirm those loans to receive additional aid under the FFEL program.

*Changes:* None.

Section 682.201 Eligible Borrowers

Section 682.201(b)

*Comments:* A few commenters suggested that the term "endorser" as used in the NPRM implies that an endorser on a PLUS loan application must be the other parent of the student for whom the loan is made. These commenters pointed out that the Secretary has issued policy guidance for the FFEL Program that would permit a creditworthy nonparent to be an endorser on the Federal PLUS application of a non-creditworthy parent borrower and that this would be in keeping with the provisions of the Federal Direct Loan Program.

*Discussion:* The Secretary does not believe that the term "endorser" suggests such a restriction and believes that it is unnecessary to reflect this guidance in the regulations.

*Changes:* None.

Section 682.201(b)(7)

*Comments:* Several commenters expressed a concern that lenders be permitted to exercise "professional judgment" in determining whether to make a Federal PLUS loan in spite of an initial finding of adverse credit. They stated that the lender should have the option of using this "professional judgment" to *document* the existence of extenuating circumstances. They specifically expressed concern that the NPRM, as written, restricted valid documentation of extenuating circumstances to a new credit report, a statement from the creditor, or a statement from the borrower in the event of a debt less than $500.

*Discussion:* These commenters were addressing two different but related issues in their comments. The first issue addresses lender flexibility in determining whether to make a loan when the initial credit report includes indicators of adverse credit. The second issue relates to the documentation needed by a lender when making a determination that extenuating circumstances exist and determining to make the PLUS loan based on that determination. The NPRM, as written, states in § 682.201(b)(7)(iii) that "Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history * * *." This provision specifically gives the lender the flexibility to determine that some cases involve extenuating circumstances that would provide a legitimate criterion for PLUS loan approval. The NPRM further states that the lender must retain documentation demonstrating its basis for determining that extenuating circumstances existed and that the documentation *may* include an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500. The use of the word "may" indicates that there could be other documentation that the lender would deem sufficient to override the adverse credit determination.

*Changes:* The Secretary has amended the language in § 682.201(b)(7)(vi) of the regulations to include the phrase "but is not limited to" to the list of documentation to clarify that the list is not all-inclusive.

*Comments:* Some commenters believed that the definition of adverse credit is too restrictive. The commenters believed that allowing one account that is 90 days past due to prohibit borrowing when the parent may have ten other accounts that are current is not a true indication of the borrower's payment history. The commenters recommended that the credit history have no more than an *average* of 30-day delinquency on all debts.

*Discussion:* The Department views the averaging of past-due accounts to be more burdensome than the 90-day standard proposed in the regulations. Further, it is unnecessary given the discretion available to a lender to apply the extenuating circumstances criterion.

*Changes:* None.

*Comments:* Several commenters stated that lenders should be given the right to restrict the amount a parent borrows if the parent does not have the capacity to repay the loan. This is especially significant since Congress removed the cap on PLUS loans.

*Discussion:* This issue was discussed in the preamble to the NPRM. While the statute does not include the ability to repay a PLUS loan as an eligibility criterion, a lender is not prohibited from maintaining a lending policy that would examine parental ability to repay in determining whether to make a loan. However, once the lender has decided to make a loan, the lender has no authority to reduce the statutory limit provided under the PLUS program.

*Changes:* None.

*Comments:* A few commenters expressed concern about confusion resulting from slightly different wording in Dear Colleague Letter 93–L–159, dated September 1993, and the NPRM regarding interpretation of the wording in the proposed regulation that "* * * the applicant is considered 90 or more days delinquent on the repayment of a debt." The DCL indicated that one criterion for having adverse credit is that the applicant is considered 90 days or more delinquent on the repayment of a debt "on the day of the lender's examination of the credit report." This was interpreted by some commenters to mean that the lender must extrapolate delinquency based on the date of the credit report and the date on which the lender examined that report.

*Discussion:* It was the Secretary's intention in the Dear Colleague Letter that the lender would consider the applicant as being 90 days or more delinquent on the repayment of a debt *only* if the applicant was reported 90 days delinquent on the credit report being reviewed. The regulations are consistent with this approach.

*Changes:* None.

*Comments:* Commenters expressed concern that there was no timeframe in the NPRM indicating that the credit bureau report used in determining adverse credit history must be current and accurate and not outdated.

*Discussion:* In an attempt to give the lender greater flexibility, the Secretary had not included a reference to a specific timeframe for the credit report in the regulations. However, in DCL 93–L–159 the Department stated that the credit report must be secured within a timeframe that would ensure the most accurate, current representation of the borrower's credit history before the first day of the period of enrollment for which the loan was intended.

*Changes:* Since the language in the DCL reflects the Secretary's position on the timing of securing the credit report, that language has been added to the final regulations.

*Comments:* One commenter indicated that the "90 days or more delinquent on any debt" requirement did not make any allowance for disputed debts with a credit bureau that is still investigating the dispute. This same commenter also found the term "default determination" too vague and undefined.

*Discussion:* The Secretary believes that the lender's option of applying the extenuating circumstances criterion would permit the lender, based on its examination of supporting documentation presented by the borrower, to override a determination of adverse credit in the case of a legitimately disputed debt that was not resolved at the time of the credit report.

The commenter correctly pointed out that while default has been defined for purposes of the FFEL Program, its definition could vary with regard to other debts. It is specifically for this reason that the Secretary has not attempted to define, for purposes of these regulations, the term non-Title IV debt.

*Changes:* None.

Section 682.201(c)

*Comments:* Several commenters recommended that the Secretary amend this section to reflect the changes made to the Consolidation Loan Program by OBRA and 1993 Technical Amendments. The commenters specifically noted that OBRA deleted the requirement that the borrower must consolidate at least $7,500 in eligible student loans. The commenters also noted that the 1993 Technical Amendments modified the requirement that a defaulted borrower who has made satisfactory repayment arrangements may be eligible to borrow under the Consolidation Loan Program.

*Discussion:* The Secretary agrees that these regulations should reflect the self-

implementing statutory changes made to the Consolidation Loan Program.

*Changes:* The regulations have been revised to incorporate the self-implementing statutory changes.

Section 682.204 Maximum Loan Amounts

*Comments:* Many commenters recommended that the annual loan limits be revised to include changes made to the proration requirements by the 1993 Technical Amendments.

*Discussion:* The Secretary agrees with the commenters that the regulations should reflect the new proration requirements.

*Changes:* The regulations have been revised to incorporate the new loan proration requirements. The Secretary has also revised § 682.603(f)(3) to reflect the formula to be used in certifying a Stafford or SLS loan amounts subject to proration.

*Comments:* Some commenters recommended that the regulations should reflect the loan limits for the Unsubsidized Stafford Loan Program.

*Discussion:* The Secretary agrees with the commenters.

*Changes:* Section 682.204 (c), (d) and (e) incorporates the loan limits for the Unsubsidized Stafford Loan Program.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(b)(1)(v)(B)(1)

*Comments:* Some commenters suggested that the regulations be revised to specifically allow for the delivery of a lump sum or master check from a lender to a school that can be placed in an account of the school, as with electronic funds transfer, and credited to an individual student's account.

*Discussion:* The Secretary agrees that the regulations should allow for delivery of loan proceeds by means of a lump sum check. This change recognizes the acceptance by the Department of the "master check" concept as provided in earlier guidance.

*Changes:* The regulations have been revised to permit the disbursement of loan proceeds by "master check" for a number of borrowers in addition to an individual check for each borrower. The definition of "disbursement" has also been revised to include the transfer of loan proceeds by a master check that represents loan amounts for more than one borrower.

*Comments:* A commenter suggested that the Secretary expand the regulations to provide that a student enrolled in a foreign school have the option of having the loan proceeds delivered to the student or to the foreign school. The commenter suggested that the regulations apply to students studying abroad for credit at the home school and appear to exclude students enrolled in a foreign school who are not studying for credit at the home school.

*Discussion:* The Secretary agrees with the commenter that the proposed regulations did not provide students attending eligible foreign schools the option of receiving the loan proceeds directly or having the funds delivered to the school. The Secretary recognizes that section 428(b)(1)(N) of the HEA specifically provides borrowers in this circumstance this option.

*Changes:* Section 682.207(b)(1)(v)(D) has been added to provide the option to borrowers attending an eligible foreign school but who are not studying for credit at a home school to have their loan proceeds delivered to them directly or sent to the school.

Section 682.300 Payments of Interest Benefits on Stafford and Consolidation Loans

Section 682.300 (a)

*Comments:* Several commenters noted that proposed § 682.300(a) should be revised to specify that the Secretary pays interest on *subsidized* Stafford loans.

*Discussion:* The Secretary agrees that this change is necessary to prevent confusion.

*Changes:* The regulations have been revised to specify "subsidized Stafford" loans.

Section 682.300(c)

*Comments:* Several commenters suggested that the use of the word "disbursement" as it relates to the limitations on interest paid to a lender prior to disbursement of a loan should be restricted to its more "traditional" use, *i.e.*, issuing of loan proceeds by the lender, rather than interpreting it to mean "delivery" of loan proceeds to the borrower by the school.

*Discussion:* As noted in the preamble to the NPRM of March 16, 1994 (59 FR 12489), the Department's interpretation of Congress' use of the word "disbursement" in this context and its applicability to the interest limitation provision were thoroughly discussed during negotiated rulemaking. However, as a result of discussions with the negotiators, the Department agreed to proposed regulatory language that would achieve the statutory intent while developing a schedule for lender billing of interest on the more easily documented disbursement date. The term "disbursed" as it is used in § 682.300(c) refers to the traditional use for issuance of funds by the lender. The interest limitation provisions are then applied depending on whether the loan proceeds are disbursed by the lender before or after the first day of the period of enrollment for which the loan is intended.

*Changes:* None.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

Section 682.301(a)(3)

*Comments:* Several commenters noted that § 682.301(a)(3), regarding the eligibility of Consolidation loan borrowers for interest benefits during authorized deferment periods, should be revised to reflect OBRA.

*Discussion:* OBRA changed section 428C(b)(4)(C)(i) of the HEA to limit interest subsidized deferments to Consolidation loan borrowers who receive Consolidation loans that discharge only subsidized Stafford loans. This change was effective for Consolidation loans made based on applications received by the lender on or after August 10, 1993.

*Changes:* The regulations have been revised to reflect the changes made by OBRA.

Section 682.401 Basic Program Agreement

Section 682.401(b)(4)

Section 682.401(b)(4)(i)(B)

*Comments:* Some commenters expressed concern that borrowers not be subjected to unreasonable and onerous demands for documentation for purposes of reinstatement of borrower eligibility. The commenters suggested that borrowers be allowed to provide documentation over the phone or by facsimile.

*Discussion:* The Secretary does not believe that an agency can assess a borrower's total financial circumstances to determine a reasonable and affordable payment amount without examining documentation from the borrower. The Secretary does not believe that the documentation requirements contained in the regulations are onerous. The Secretary believes that submission of a monthly budget statement on a guaranty agency prepared form and some proof of current income are minimal requirements. The Secretary believes that a statement of the unpaid balance of all of a borrower's FFEL loans is necessary only if the guaranty agency does not already have this information. The Secretary has no objection to the borrower submitting this documentation via facsimile technology.

*Changes:* None.

*Comments:* Many commenters were strongly opposed to the reference to the $50 payment in proposed § 682.401(b)(4)(i)(B) in regard to the requirement that the guaranty agency document the borrower's file if the borrower's reasonable and affordable payment is determined to be less than $50. The commenters believe that agencies are using the reference to $50 to justify their denial of payments of less than $50.

*Discussion:* The Secretary expects a guaranty agency to make a determination of what constitutes a "reasonable and affordable" payment amount on a case-by-case basis after examining financial information from the defaulted borrower who requests reinstatement of eligibility for federal student financial assistance. The proposed rule clearly stated that $50 may not be the required minimum payment for a borrower if the agency determines that a smaller payment amount is appropriate based on its examination of the borrower's total financial circumstances. An agency is prohibited from establishing $50 or any other amount as a required minimum threshold payment amount in lieu of the appropriate reasonable and affordable payment based on the borrower's total financial these circumstances. The reference to $50 in the regulations is intended by the Secretary to be a documentation standard for guaranty agencies. A guaranty agency is required to document its determination of a borrower's reasonable and affordable payment only if the payment is less than $50.

*Changes:* The regulations have been revised to clearly provide that a guaranty agency must not establish a minimum payment amount of $50 if the agency determines that a smaller payment amount is reasonable and affordable based on the borrower's total financial circumstances.

*Comments:* Some commenters expressed concern that consideration of a spouse's income in the determination of reasonable and affordable payments may be in violation of the Federal Equal Credit Opportunity Act. The commenters noted that the spouse is not liable for the other spouse's individual debt and, therefore, consideration of the secondary spouse's income may not be considered in determining a monthly reasonable and affordable payment. The commenter suggested that clarification must also be made in this section that disclosure of child support and/or alimony payments is voluntary, consistent with the Federal Equal Credit Opportunity Act.

*Discussion:* The Secretary believes that, for a borrower with dependents, examining only the borrower's income and expenses may not reveal the borrower's true financial circumstances. The Equal Credit Opportunity Act relates to the application for credit. The determination of reasonable and affordable payments in connection with reinstatement of eligibility, rehabilitation or meeting conditions for consolidation does not relate to the application for credit. See 12 CFR Part 202.

*Changes:* None.

Section 682.401(b)(6)(i)

*Comments:* Some commenters supported the regulations that provide a guaranty agency the authority to establish reasonable criteria for an institution to participate in the guaranty agency's program. However, many other commenters strongly objected to this provision. The objecting commenters suggested that in § 682.401(b)(6)(i), the Secretary allows a guaranty agency to determine that an institution does not satisfy the standards of administrative capability and financial stability standards as defined in 34 CFR Part 668 and believed that the Secretary is making the guaranty agencies enforcers of the set of administrative capability and financial responsibility standards. The commenters believed that this structure is entirely outside of the statute and clearly ignores the program integrity triad as mandated under the new Part H (Program Integrity) of the HEA with a particular role for each part of the Triad. The commenters suggested that if the Triad is to be successful, the responsibilities contained in the statute must be clearly set forth in regulations with no vagaries concerning responsibility. The commenters noted that in the General Provisions NPRM, the Secretary proposed to provisionally certify an institution that does not currently meet the standards of administrative capability but is expected to meet those standards in a reasonable period of time. The commenters suggested that under the March 16, 1994 NPRM, a guaranty agency could deny participation to these institutions, including an institution with a cohort default rate of 20% or greater. The commenters believed that it is the Secretary's role to ensure that institutions meet appropriate standards of administrative capability and financial responsibility and believed the Secretary does so by certifying institutions. The commenters suggested that if the institution has been certified, the guaranty agency should be required to rely on that certification unless and until the Secretary uses his authority to revoke that certification. The commenters suggested that a guaranty agency provided this improper delegation of authority may well have an incentive to retaliate against certain institutions as a result of their filing of appeals of their cohort default rates. The commenters suggested that appeals of cohort default rates, especially appeals alleging servicing error, may directly or indirectly challenge the integrity of the guaranty agency and may have the economic effect of removing certain loans from being eligible for federal reinsurance. The commenters further suggested that because of the clear possibility of conflict of interest, it is irrational to allow guaranty agencies to effectively terminate the participation of institutions in Title IV programs. The commenters asserted that in contrast to a State Postsecondary Review Entity (SPRE), an accreditation agency or the Department, a guaranty agency is not an impartial adjudicator of these issues.

*Discussion:* The Secretary understands that a guaranty agency is not a member of the Program Integrity Triad authorized under Part H of the HEA and that the Triad has imposed a new management structure on the oversight of schools participating in the Title IV student assistance programs. However, the Secretary believes that the statute continues to provide a guaranty agency with oversight authority for schools applying to or continuing to participate in its guaranteed loan program and disagrees that the regulations provide an improper delegation beyond the scope of statutory authority. Section 428(b)(1)(V) provides authority for the guaranty agency to require a participation agreement between the agency and the school as a condition for the agency guaranteeing loans for students attending the school. As part of that process, the Secretary believes that a guaranty agency must be permitted to establish standards that are consistent with the standards of administrative capability and financial responsibility contained in 34 CFR 668 for a school's participation in its guaranteed loan program. The Secretary believes that a guaranty agency should be allowed to protect itself from schools that abuse the FFEL program. Generally, a guaranty agency must assume that a school that the Secretary has found to be eligible is eligible. However, because the agency's examination of a school for participation in its program may take place a significant period of time after the Secretary's examination of the school for certification, the Secretary understands that the agency may

uncover information relevant to the school's administrative capability and financial responsibility that it wishes the Secretary to consider before signing a participation agreement with the school. Subject to the Secretary's agreement that such information indicates the school's failure to meet the standards of administrative capability and financial responsibility contained in 34 CFR 668, the agency may decline to establish a participation agreement with the school. The Secretary believes this authority provided to a guaranty agency does not intrude upon the statutory responsibilities of other members of the Triad. The Secretary also notes that the guaranty agencies have long had responsibility for reviewing schools and have specific statutory authority in section 428(b)(1)(T)(ii)(I) for limiting, suspending, or terminating a school from the FFEL program. The Secretary believes that these regulations are consistent with the agency's statutory authority and longstanding Department policy and regulation. Additionally, the Secretary does not believe that this regulatory authority would provide an agency with the opportunity to retaliate against a school as a result of a school's appeal of its cohort default rate. Such an appeal presumes that a school already participates in the agency's program. The statute authorizes an agency to initiate an emergency action, limitation, suspension or termination (LST) of an eligible institution, but provides that the action must be undertaken pursuant to criteria, rules, or regulations issued under the student loan insurance program which are substantially the same as regulations issued by the Secretary. Further, an emergency action or LST is subject to review by the Secretary. Therefore, the Secretary does not believe that the guaranty agency can use its authority to retaliate against a school as the commenter suggests.

*Changes:* The Secretary has revised § 682.401(b)(6)(i)(F) of the regulations to clarify that a guaranty agency's determination that a school does not satisfy the standards of administrative capability and financial responsibility defined in 34 CFR 668 is subject to the agreement of the Secretary.

Section 682.401(b)(6)(ii)

*Comments:* A number of commenters objected to the provision that gives a guaranty agency the authority to limit the total number of loans or the volume of loans made to students attending a particular school, or to otherwise establish appropriate limitations on the school's participation in the agency's program where the agency has determined that a school does not satisfy the financial responsibility and administrative capability standards. The commenters suggested that this inappropriately places responsibility for evaluating a school's administrative and financial responsibility in the hands of the guaranty agency. Some commenters objected to applying this provision to schools that are renewing an application to continue to participate. Some commenters suggested that allowing guaranty agencies to limit the participation of schools that seek to renew participation gives guaranty agencies an easy way to retaliate against institutions that appeal their cohort default rates or take other actions that challenge the guaranty agency.

*Discussion:* Section 428(b)(1)(T) of the HEA authorizes a guaranty agency to limit the total number of loans or the volume of loans to students attending a particular eligible institution during any academic year. The Secretary notes that there must be a legitimate basis for the agency to impose such a limitation. The Secretary expects a guaranty agency to maintain evidence of the school's questionable administrative capability.

*Changes:* None.

Section 682.401(b)(6)(iii)

*Comments:* The commenters suggested that if a guaranty agency limits, suspends, or terminates (LST) the participation of a school that the Secretary should not extend the LST to all locations of the school until the Department determines that the guaranty agency in fact followed proper procedures, correctly interpreted the law and regulations, and gave all due process rights to the institution.

*Discussion:* Section 428(b)(1)(T)(ii)(I) provides authority to a guaranty agency to limit, suspend, terminate (or take emergency action against) a school based on the Secretary's regulations or regulations of the guaranty agency that are substantially the same as regulations issued by the Secretary. The statute further directs the Secretary to apply the limitation, suspension, or termination proceeding to all locations of those schools unless the Secretary finds, within 30 days of the guaranty agency's notification to the Secretary of the action, that the action did not comply with the statute and regulations. To make this finding, the Secretary reviews the guaranty agency's actions under section 428(b)(1)(T)(ii) of the HEA before extending the LST to all locations.

*Changes:* None.

Section 682.401(b)(16)

*Comments:* A few commenters suggested that the regulations be revised to permit assignment of partially disbursed loans if the lending institution closes or is terminated and the assignment is necessary to be certain that undisbursed funds are delivered to the student.

*Discussion:* Section 428G(g) of the HEA allows for sale and transfers only when a loan is fully disbursed unless the sale will not change the party to whom payments are to be made and the first disbursement has been made.

*Changes:* None.

Section 682.401(b)(24)

Section 682.401(b)(24)(iv)

*Comments:* A few commenters suggested that the regulations be revised to provide that the guaranty agency provide schools that request information under this paragraph an appropriate number for borrower inquiries if the assignee of a loan uses a lender servicer, rather than the number of the lender. The commenters pointed out that many lenders use servicers to address loan inquiries. The commenters suggested that these lenders do not staff their offices to address borrower inquiries, or maintain on-line access to borrower information. Inclusion of the assignee's number will flood these offices with calls, frustrating the intent of providing the borrower with loan information.

*Discussion:* The Secretary agrees with the commenters.

*Changes:* The regulations have been revised to include reference to another appropriate number for borrower inquiries if the assignee uses a lender servicer.

Section 682.401(b)(25)

*Comments:* Some commenters suggested that the designation as exceptional servicer or lender is a significant event in the business of the servicer or lender. The commenters suggested that the parties should be aware of the progress of their application. Another commenter suggested that the period of time for the guaranty agency to provide the Secretary with any information regarding an eligible lender or servicer applying for designation for exceptional performance should be increased to 60 days.

*Discussion:* The Secretary notes that these comments relate to § 682.415 of the regulations included in a Notice of Proposed Rulemaking published on April 20, 1994. The commenters' concerns will be addressed in that package.

*Changes:* Section 682.401(b)(25) has been removed.

Section 682.401(c)

*Comments:* A number of commenters suggested that the Secretary delete the LLR provisions from the regulations since some of these provisions have been repealed by OBRA. Other commenters suggested that the regulations should be revised to address the issues and changes made by OBRA.

*Discussion:* The Secretary recognizes that OBRA repealed the provisions providing guaranty agencies the authority to deny LLR services to students attending certain categories of schools and has removed these provisions from the regulations. In addition, the Secretary has reflected certain other changes made by OBRA in these regulations.

*Changes:* The regulations have been revised to delete the provisions allowing limitations of LLR services. The Secretary has also incorporated some changes made by OBRA affecting LLR services. Section 682.401(c) of the regulations has been revised to incorporate the new requirements that: (1) The guaranty agency must respond to a student within 60 days after the student submits an original complete application; and (2) prohibit the agency from requiring a borrower to obtain more than two rejections from eligible lenders.

Section 682.401(c)(8)

*Comments:* A commenter suggested that the provision be revised to reflect that during the appeal process, for schools that have been notified that LLR services will not be provided to the school's students, the guaranty agency must provide LLR services to students attending the school until the date on which the *guarantor is notified* rather than until the date the Secretary rejects the appeal. The commenter noted that the guaranty agency should be protected for LLR loans made in the brief period between the date that the Secretary rejects the appeal and the date that the guaranty agency is aware of the rejection and ceases origination activities. The commenter suggested that the regulations as currently written would appear to cause these "interim" loans to be uninsured.

*Discussion:* The Secretary notes that, with the removal of the provisions eliminating LLR services, the school's appeal process is no longer applicable. Therefore, the Secretary has deleted this provision from the regulations.

*Changes:* Section 682.401(c)(8) has been deleted.

Section 682.405 Loan Rehabilitation

*Comments:* Several commenters suggested that a defaulted borrower be afforded only one opportunity to benefit from an agency's loan rehabilitation program. The commenters believe that a borrower who defaults again subsequent to rehabilitation is not likely to be a good candidate for loan rehabilitation.

*Discussion:* The Secretary points out that pursuant to section 428F(a)(1)(A) of the HEA, a borrower may request to have a defaulted loan rehabilitated and after the borrower has made 12 consecutive monthly payments, the guaranty agency must, if practicable, sell the loan to an eligible lender. Once a borrower's loan is rehabilitated, the borrower is no longer considered to be in default on the loan and regains eligibility for all program benefits. Section 428F(b) of the HEA allows a borrower with one or more defaulted loans to regain eligibility for Title IV student financial assistance after the borrower has made six consecutive monthly payments. The Secretary notes that section 428F(b) was amended by the 1993 Technical Amendments to specifically permit borrowers to receive this benefit only once. However, no such limitation was placed on the benefits of rehabilitation. In determining whether rehabilitation is practicable, a guaranty agency should determine whether a borrower who has made 12 consecutive monthly payments is a good candidate for loan rehabilitation. A borrower's previous experience in the loan rehabilitation program may be a factor considered by the guaranty agency in making this assessment.

*Changes:* None.

Section 682.405(a)(1)

*Comments:* Some commenters suggested the regulations should be revised to allow guaranty agencies to consider whether the borrower is a good candidate for loan rehabilitation. The commenters noted that the Dear Colleague Letter (GEN 92–91 dated October 1992) provides that "In determining whether a sale is practicable, a guaranty agency should determine whether a borrower * * * is a good candidate for loan rehabilitation." The commenters believed that the guaranty agency should have the discretion to deny borrowers access to its rehabilitation program if it believes existing circumstances so warrant. The commenters suggested, for example, if there is a judgment against a borrower, the original terms of the promissory note may have been altered, and the original note may be nonexistent. The commenters believed that it is overly burdensome, if not illegal, to rehabilitate a loan if a judgment has been issued against the borrower.

*Discussion:* The Secretary interprets section 428F of the HEA to require that the rehabilitation program must be available to all defaulted borrowers even if a guaranty agency has previously been able to secure payment from the borrower only through involuntary means (e.g., through a court-ordered judgment, Internal Revenue Service tax offset, or wage garnishment). The Secretary expects guaranty agencies to provide, on an unsolicited basis, information on the loan rehabilitation program to all defaulted borrowers. However, the Secretary does not expect that payments made on the loan through involuntary means be counted toward the borrower's required 12 consecutive payments for rehabilitation. The Secretary believes that the defaulted borrower must initiate a voluntary series of payments for this purpose. The Secretary understands, however, that even after the required voluntary series of monthly reasonable and affordable payments, the rehabilitation of the loan through its purchase by a lender may not be possible in all cases. The Department expects guaranty agencies to work diligently to identify lenders willing to purchase these loans, thereby rehabilitating them. However, section 428F(a)(2) of the HEA states that the guaranty agency shall sell the loan, *if practicable* [emphasis added]. The Secretary believes that the agency has the authority in working with its repurchasing lenders to determine if some borrowers are not good candidates for loan rehabilitation because they continue to represent a high risk of default once the loan is purchased. In those instances, the borrower's loan would remain with the guaranty agency and the borrower would continue to make payments on the loan to the agency.

*Changes:* Section 682.405(a)(1) of the regulations has been revised to allow the agency to determine if the sale of a loan to another lender is practicable for the purposes of loan rehabilitation.

*Comments:* Some commenters suggested that a loan should be considered rehabilitated at such point that the borrower has met the criteria over which the borrower has control, *i.e.*, when the twelve payments have been made. The commenters believed that the sale of the loan to an eligible lender is an unrelated administrative task.

*Discussion:* The Secretary disagrees with the commenters. The Secretary notes that the loan is still in default as

long as it is with the guaranty agency, even after the required series of payments are made and the borrower is not eligible for all benefits of the program (e.g., deferment). The Secretary notes that section 428F(a) of the HEA provides that only after the loan has been repurchased by the lender has it been effectively rehabilitated.

*Changes:* None.

*Comments:* Some commenters suggested that the proposed regulations should be clarified to state that the borrower who rehabilitates a loan regains full eligibility for deferments and forbearances, even if the borrower previously received a deferment.

*Discussion:* The Secretary disagrees with the commenters that the borrower should regain full eligibility for deferments. The Secretary notes longstanding Department policy that the deferments with which a maximum period is associated apply to the borrower and not to individual sets of loans and that the borrower will only qualify for the balance of deferment eligibility.

*Changes:* Section 682.405(a)(3) of the regulations has been revised to provide that once the loan is rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility the borrower may have under the law from the date of the rehabilitation.

Section 682.405(b)(1)

*Comments:* Some commenters suggested that the regulations be revised to define "voluntary payments" to include payments made on behalf of the borrower.

*Discussion:* The Secretary believes that the borrower must make a good faith effort in making the required consecutive monthly payments to qualify for loan rehabilitation. The Secretary does not believe that payments made by parents or other individuals on behalf of the borrower for purposes of rehabilitating a defaulted loan constitutes a good faith effort on the part of the borrower.

*Changes:* None.

*Comments:* Some commenters noted that the regulations suggested that a borrower may qualify for loan rehabilitation even if the guaranty agency has obtained a judgment against the borrower for the defaulted loan. The commenters suggested that since the original promissory note is surrendered to the court when there is a judgment on the loan, it would become very difficult to initiate legal proceedings against a rehabilitated borrower who again defaulted on the rehabilitated loan.

*Discussion:* The Secretary shares the concerns raised by the commenters. However, the Secretary also believes that a borrower should not lose the opportunity to rehabilitate a defaulted loan due solely to a judgment. Accordingly, the Secretary has modified the regulations to require a borrower who wishes to rehabilitate a loan on which a judgment has been entered to sign a new promissory note prior to the sale of the loan to an eligible lender. This approach is necessary to make sale of the loan practicable.

*Changes:* The Secretary has amended § 682.405(a) to add a new paragraph (4) to require a borrower against whom the agency has a judgment to enter into a new promissory note.

Section 682.405(b)(1)(i)(A)

*Comments:* Some commenters suggested that the regulations should allow for the inclusion of utilities and work-related expenses in the listing of necessary expenses for the purpose of determining a reasonable and affordable payment.

*Discussion:* The Secretary agrees with the commenters.

*Changes:* The regulations have been revised to include utilities and work-related expenses.

Section 682.405(b)(1)(i)(C)(1)

*Comments:* Some commenters suggested that the regulations should be revised to clarify that the borrower's financial status should be determined by reviewing the most current information available, particularly the most recent U.S. income tax return for documentation of the borrower's current income.

*Discussion:* The Secretary agrees with the commenters.

*Changes:* The regulations have been revised to provide that the borrower must provide the most recent U.S. income tax return.

Section 682.405(b)(1)(i)(C)(3)

*Comments:* A few commenters recommended that the unpaid balances on all FFEL Program loans be considered when determining the monthly loan amount that is reasonable and affordable, not just defaulted FFEL loans.

*Discussion:* The Secretary agrees with the commenters.

*Changes:* Section 682.405(b)(1)(i)(C)(3) of the regulations has been revised to provide that a guaranty agency shall consider unpaid balances on all FFEL Program loans held by other holders when making a determination of what constitutes a "reasonable and affordable" payment for loan rehabilitation or reinstatement of Title IV eligibility.

Section 682.405(b)(1)(i)(C)(iv)

*Comments:* Some commenters suggested that a guaranty agency should not be required to provide the borrower with a *written* statement because the borrower may interpret such a statement as a new obligation. The commenters stated that if the loan is rehabilitated, the lender purchasing the rehabilitated loan will be required to disclose new terms. The commenters further stated that if the borrower has a written statement from the guaranty agency, but not from the lender, the borrower may be able to claim that he or she has no legal obligation to abide by the terms established by the rehabilitating lender.

*Discussion:* The Secretary did not intend to require the guaranty agency to disclose new repayment terms on the rehabilitation loan. The Secretary agrees that it would be more appropriate for the disclosure to be done by the purchasing lender. Rather, the Secretary merely intended the guaranty agency to provide written confirmation of the agency's determination of the borrower's reasonable and affordable payment amount, the number of consecutive monthly payments that must be made to qualify for consideration for loan rehabilitation, any deadlines attached to those payments, and any factors the agency will consider in determining whether the repurchase of the borrower's loan is practicable.

*Changes:* Section 682.405(b)(1)(iv) of the regulations has been revised to require the guaranty agency to provide a written statement confirming the borrower's reasonable and affordable payment amount and other conditions surrounding the loan rehabilitation.

*Comments:* Some commenters suggested that the guaranty agencies be required to inform borrowers who enter into a renewed eligibility plan of the possibility of loan rehabilitation after 12 months. The commenters suggested that by doing so borrowers can make informed decisions about whether exercising the option after 12 payments is to their advantage.

*Discussion:* The Secretary agrees with the commenters that a guaranty agency should be required to inform a borrower when entering into an agreement to reinstate loan eligibility of the possibility of loan rehabilitation after an additional six monthly payment amounts and the potential consequences of loan rehabilitation. The Secretary believes that a borrower should be provided sufficient information about the circumstances and potential

consequences of loan rehabilitation to have an understanding of what is expected before making the required 12 monthly payments. Borrowers should be aware of, for example, that a potential increase in loan payment amounts may be necessary once the loan is repurchased by the lender if the reasonable and affordable monthly payment amount paid to the guaranty agency will not provide for the borrower to repay the loan within the 10-year maximum repayment period. The Secretary agrees that providing this information will place the borrower in a position to make an informed decision of whether or not to exercise his or her option for loan rehabilitation.

*Changes:* The regulations have been revised to provide that guaranty agencies must inform borrowers of the consequences of loan rehabilitation after 12 months. Additionally, a new paragraph has been added as § 682.401(b)(4)(iv) to require guaranty agencies to provide information to defaulted borrowers who made the required series of monthly payments to reinstate Title IV eligibility of the possibility of loan rehabilitation.

Section 682.406(a)(14)

*Comments:* A few commenters recommended that the regulations be revised to reflect the 1993 Technical Amendments change that provides that the guaranty agencies certify that diligent attempts of skip-tracing have been made by the lender under § 682.411 before receiving reinsurance payments.

Some commenters suggested that the regulations should indicate that the guaranty agency assures the Secretary that diligent attempts have been made by the lender and the guaranty agency under § 682.411 to locate the borrower through the use of reasonable skip-tracing techniques.

*Discussion:* Section 428(c)(2)(G) of the HEA, as changed by the 1993 Technical Amendments, provides that the guaranty agency may not receive reinsurance payments unless it *certifies* that diligent attempts have been made to locate the borrower through the use of reasonable skip-tracing techniques. As pointed out in the preamble to the proposed regulations, the Secretary believes that it is primarily a lender responsibility to locate the borrower through the use of skip-tracing techniques. However, the Secretary intends that diligent attempts must be made by either the lender or the agency to locate the borrower. The language of the regulations is intended to insure that if the lender does not perform the required skip-tracing, the guaranty agency will be responsible for doing so.

*Changes:* Section 682.406(a)(14) of the regulations has been revised by using the word "certifies" rather than "assures".

Section 682.407

*Comments:* A few commenters pointed out that the language in § 682.407(f) incorrectly references ED Form 1189 for adjusting improperly paid administrative cost allowance payments.

*Discussion:* The Secretary agrees with the commenters.

*Changes:* The regulations have been revised to reflect that the adjustment is to be made on the ED Form 1130.

Section 682.409 Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

*Comments:* One commenter asked if it is the intent of the Secretary to only benefit borrowers who move from the FFEL program to the Federal Direct Student Loan (FDSL) Program under this provision.

*Discussion:* Although the Secretary is authorized to require FFEL loans to be assigned to the Secretary to affect an orderly transition from the FFEL to the Federal Direct Loan Program, one of the primary reasons for loan assignment is that the guaranty agency has been unable to collect on a defaulted loan it holds and the Secretary believes that the Department can more effectively collect on the loan. Loans assigned to the Department under the authority specified in section 682.409 are all defaulted FFEL loans held by guaranty agencies. These loans do not include non-defaulted FFEL loans which a borrower has requested to be consolidated under the Federal Direct Loan Consolidation Program. Until a defaulted FFEL borrower resolves his default status with the holder of the loan, either the guaranty agency prior to the assignment or the Department following assignment, the borrower is not eligible for any benefits under the FFEL or Federal Direct Loan Program. As a result, the Secretary does not believe that the mandatory assignment process benefits particular defaulted borrowers over others.

*Changes:* None.

*Comments:* One commenter asked what guidelines the Secretary would choose to have loans assigned. Specifically, the commenter was concerned that loan assignment might cause a guaranty agency to experience financial instability.

*Discussion:* To the extent that the financial stability of a guaranty agency is in the Federal fiscal interest, the Secretary may choose, on a case-by-case basis, not to require the assignment of loans if the assignment will jeopardize the agency's financial stability.

*Changes:* None.

*Comments:* One commenter requested clarification on how mandatory assignment of FFEL loans relates to an orderly transition from the FFEL Program to the FDSL Program.

*Discussion:* As noted by the commenter, section 428(c)(8) of the HEA provides that the Secretary will require an agency to assign loans if the Federal fiscal interest so requires. In addition, the statute deems the orderly transition to the FDSL Program to be in the Federal fiscal interest. The proposed regulations did not clearly reflect the Secretary's discretion in this area. Accordingly, the Secretary has revised the regulations to reflect the Secretary's statutory discretion. The Secretary believes that the assignment of FFEL loans will not impede the orderly transition to the FDSL Program. If it appears to the Secretary that the orderly transition to the FDSL Program is either impeded or facilitated by mandatory assignment, the Secretary will exercise his authority to modify the assignment criteria.

It is also the view of the Secretary that it is in the Federal fiscal interest for the Federal government to collect defaulted student loans owed by Federal employees unless the guaranty agency has obtained a judgment against the Federal employee to collect by wage garnishment 15 percent or more of disposable pay as defined in 34 CFR Part 31.

*Changes:* The regulations have been changed to reflect the Secretary's discretion.

*Comments:* One commenter indicated support for the criteria for performance standards established in this section for mandatory assignment of certain loans to the Secretary by a guaranty agency. The commenter said the language in this section represents the efforts of the community and the Secretary's staff in developing an equitable criteria for the assignment of loans and that the criteria outlined in this section best protect the Federal fiscal interest.

*Discussion:* The Secretary agrees with the commenter.

*Changes:* None.

*Comments:* Two commenters asked if this section should be revised to exclude those agencies that are determined to qualify for Exceptional Performer status.

*Discussion:* Designation as an Exceptional Performer means that a guaranty agency has shown a high level

of compliance with the provisions of 34 CFR 682.410. That section of the regulations focuses on the default collection process, not the results of the process. Section 682.409 establishes standards that focus on outcomes as expressed in fiscal year loan type recovery rates. The Secretary believes that the collection of defaulted FFEL loans is important and should be governed by both process and outcome requirements. The Secretary does not believe that excusing guaranty agencies from complying with outcome requirements because they have complied (even to a high degree) with process requirements would adequately protect the Federal fiscal interest.

*Changes:* None.

*Comments:* A commenter asked if these provisions would force guaranty agencies to evaluate their entire preclaim and default collection operations, in order to achieve the highest recovery rate.

*Discussion:* The Secretary agrees that guaranty agencies need to evaluate their default prevention and default collection operations. These regulations represent the initial attempt by the Secretary, in consultation with the guaranty agencies, to establish default collection performance standards. The Secretary believes that it is in the Department's and the guaranty agencies' best interest to establish default prevention performance standards as soon as practicable.

*Changes:* None.

*Comments:* A commenter observed that guaranty agencies will be required to monitor their operations constantly, indicating that it will be more difficult for an agency to continue producing recoveries over the 80 percent standard required by the regulations. The commenter noted that once the Secretary imposes additional assignment requirements on agencies that fall below the 80 percent standard, this provision will automatically increase the average recovery rate on which the 80 percent is based.

*Discussion:* The Secretary agrees that guaranty agencies will have to constantly monitor their operations to satisfy these standards. The Secretary also expects that the assignment process based on recovery rate standards will result in the gradual, steady increase in the average recovery rate.

*Changes:* None.

*Comments:* A commenter observed that this section does not require the Department to load and begin collection on defaulted loans assigned to it within a specified time period. Collection activity could cease for months while an account is being processed. The commenter noted that it is in the Department's best interest to ensure that this gap in collection activities is minimized by providing specific time periods to begin the collection of new accounts.

*Discussion:* The Secretary agrees that it is desirable to load assigned accounts quickly so that gaps in collection activity are minimized. While these regulations do not control this process, the Secretary intends to loan assigned accounts as quickly as possible.

*Changes:* None.

Section 682.409(a)(2)(i)

*Comments:* A commenter observed that participation in the IRS offset program is required by the Department and recommended that offset collections be included in calculating the recovery rate standards. The commenter believed that this will help assure guarantor participation in the IRS offset program to the maximum extent possible.

*Discussion:* The Secretary agrees with the commenter. However, the Secretary notes that the regulations do not reflect the requirement that guaranty agencies participate in the Federal Income Tax Refund Offset program. The Secretary has modified the regulations to reflect this requirement.

*Changes:* Section 682.409(a)(2)(i) has been revised to reference collections by Federal Income Tax Refund Offset.

Section 682.409(a)(3)(i)(B)

*Comments:* A few commenters suggested that the Secretary amend the appeals process for failure to meet performance standards. They asked that the Secretary either permit agencies that have a large number of borrowers making "reasonable and affordable" payments as a result of the borrowers' financial circumstances to appeal on that basis or that these loans be excluded entirely from the calculation.

*Discussion:* The Secretary agrees with the commenters that the regulations should be revised to encourage compliance with the provisions in § 682.401(b)(4) and § 682.405 requiring guaranty agencies to provide certain borrowers with "reasonable and affordable" payment plans. However, the Secretary believes that excluding loans with "reasonable and affordable" payment plans from the calculation would place an unnecessary reporting burden on the guaranty agencies, as well as increase the costs that would be incurred by the Department associated with collecting and auditing the data. The Department will provide a guaranty agency with the opportunity to demonstrate how "reasonable and affordable" payment arrangements have affected its recovery rate. The Department will make a determination on an acceptable agency recovery rate on an agency-by-agency basis. The agency will be required to identify all borrower accounts for which required reasonable and affordable payment amounts have impacted the agency's collection recovery rate. The Department will examine a sample of these accounts to determine how this should be assessed in determining the agency's recovery rate.

*Changes:* The Secretary has revised § 682.409(a)(3)(i)(B) to provide that the Federal interest will be served if the agency demonstrates that its compliance with § 682.401(b)(4) and § 682.405 has reduced substantially its fiscal year loan type recovery rate or rates.

Section 682.409(a)(3)(i)(C)(2)

*Comments:* A commenter suggested that as the paragraph is not describing a mathematical derivation, the word "categorized" is more appropriate.

*Discussion:* The Secretary agrees with the commenter.

*Changes:* Section 682.409(a)(3)(i)(C)(2) has been revised to replace "divided" with "categorized."

Section 682.409(c)(1)

*Comments:* A few commenters asked if § 682.409(c)(1) needs to specify the manner, information, and documentation necessary for mandatory assignment.

*Discussion:* The Secretary considered expanding § 682.409(c)(1) to incorporate the manual assignment and computer tape assignment procedures that are transmitted to the guaranty agencies each year by mail. However, the Secretary believes that this informal notification process has worked particularly well over the last two years, in part because it has been accomplished without the burden presented by the regulatory process. He believes that the current procedures have provided for a flexible process that has been responsive to changing guaranty agency and Departmental needs. Therefore, the Secretary has decided not to expand these regulations to include operational procedures associated with mandatory assignment.

*Changes:* None.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

Section 682.410 General

*Comments:* A few commenters noted that on-going negotiated rulemaking sessions are addressing matters covered in this section of the regulations. The commenters suggested that it would be

inappropriate for final rules to be issued in light of the negotiations underway. Commenters recommended that the Department should propose regulations for issues related to this section later through an NPRM and final rules process devoted solely to these issues.

*Discussion:* The Secretary notes that these regulations are directly related to the 1992 Amendments and were developed under the negotiated rulemaking sessions required by the 1992 Amendments. The provisions of the 1992 Amendments that were not changed by OBRA are reflected in these final regulations. The Secretary intends to propose rules to implement the provisions of OBRA related to guaranty agency reserves soon after the conclusion of current negotiated rulemaking sessions on this subject. In addition, the Secretary intends to have final regulations implementing both the 1992 Amendments and OBRA go into effect at the same time on July 1, 1995.

*Changes:* None.

Section 682.410(a)(1)(vii)

*Comments:* Commenters recommended that funds collected by the guaranty agency, included under § 682.410(a)(1)(vii) as reserve fund assets, should include only funds collected on FFELP loans held by that agency or FFELP loans for which the agency paid a claim.

*Discussion:* The Secretary agrees that clarification is necessary.

*Changes:* The final regulations have been revised to clarify that only funds collected on FFELP loans on which a claim has been paid are included in § 682.410(a)(1)(vii).

Section 682.410(a)(3)

*Comments:* Commenters objected to § 682.410(a)(3), Special rule for use of certain reserve fund assets, as redundant and confusing.

*Discussion:* The Secretary agrees that § 682.410(a)(3) is unnecessary.

*Changes:* The language in § 682.410(a)(3) has been simplified and merged into § 682.410(a)(2).

Section 682.410(a)(6)

*Comments:* A commenter urged that the Secretary consider provisions for further review and due process in connection with the requirements of § 682.410(a)(6), minimum reserve fund level.

*Discussion:* Section 682.410(a)(6) simply states the statutory requirements for minimum reserve levels. This paragraph specifies no action by the Department requiring review or due process.

*Changes:* None.

Section 682.410(a)(7)

*Comments:* A commenter suggested that the calculation of the guaranty agency "Reserve fund level" include receivables from ED and exclude payables to ED. The commenter argued that acknowledgment of those amounts is essential for an accurate determination of a guarantor's financial status.

*Discussion:* The Secretary is interested in determining the amount of assets in a guaranty agency's reserve fund at a point in time. The Secretary acknowledges that the reserve fund level as defined in this paragraph does not accurately reflect the overall financial condition of the guaranty agency. However, the Secretary also believes that including receivables from ED and deducting payables to ED would also not result in an accurate calculation of the agency's financial condition since agencies have receivables from and payables to parties other than ED. The Secretary agrees that if an agency's reserve fund level, calculated in accordance with this section, is less than the minimum specified in § 682.410(a)(6), the guaranty agency will be provided with the opportunity to submit information concerning its accounts payable and accounts receivable in extenuation of its reserve level.

*Changes:* None.

Section 682.410(a)(8)(ii)(B)

*Comments:* A commenter recommended removing loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency as an exclusion from loan guarantees transferred to another agency in § 682.410(a)(8)(ii)(B).

*Discussion:* The Secretary agrees that the reference to those loans should be removed from § 682.410(a)(8)(ii)(B) because it is duplicative of 34 CFR 682.410(a)(8)(i)(B) which already provides for this exclusion.

*Changes:* Section 682.410(a)(8)(ii)(B) has been revised to delete the reference to loans transferred because of insolvency.

Section 682.410(a)(8)(ii)(E)

*Comments:* Some commenters recommended that all loans for which a claim has been paid be subtracted from the total loans guaranteed in calculating loans outstanding in § 682.410(a)(8), definition of amount of loans outstanding. One commenter recommended subtracting from the amount of loans for which a claim has been paid only those loans for which claims were paid at the direction of the Secretary.

*Discussion:* The proposed rule would have subtracted loans for which claims are paid under § 682.412(e) on ineligible loans, under § 682.509(a)(1) because of school closing, or at the direction of the Secretary, from total loans for which a claim has been paid. The Secretary agrees that loans for which claims have been paid are not outstanding.

*Changes:* The regulations have been revised to remove the three exclusions.

Section 682.410(a)(8)

*Comments:* A commenter recommended adding to § 682.410(a)(8), amount of loans outstanding, a new paragraph (iii) to subtract the principal amount of loans not disbursed because the loan guarantee was partially canceled.

*Discussion:* Reporting requirements for Form 1130 provide detailed definitions for the items listed in § 682.410(a)(8). Partially canceled loans are one of the categories reported under cancelled loan guarantees and are therefore included in § 682.410(a)(8)(ii)(A).

*Changes:* None.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

*Comments:* A commenter recommended that § 682.414(a)(3)(ii)(K) be revised to explicitly require lenders to retain copies of audit reports for not less than five years after the report is issued. While § 682.414(a)(3)(ii)(K) implies that audits are covered under this section because they are reports, the commenter suggested that the section be revised explicitly to require that the audit reports be kept on file.

*Discussion:* The Secretary agrees with the commenter that the regulations should explicitly require a lender to retain a copy of its annual audit report for not less than five years after the report is issued.

*Changes:* Section 682.414(a)(3) has been revised to incorporate the commenter's recommendation.

Section 682.511 Due Diligence in Collecting a Loan

*Comments:* A few commenters suggested that the regulations be revised to reflect that joint borrowers may cancel a loan even if they do not simultaneously satisfy the same cancellation criterion but the loan would otherwise be "cancellable". The commenters cited the example of a loan with joint borrowers where one borrower becomes totally, permanently disabled and the other files for

bankruptcy (with the loan subject to discharge), both conditions under which a borrower would normally be able to cancel a loan.

*Discussion:* The Secretary clarifies that a lender may file a claim for reimbursement based on the fact that, at the time of the request for discharge, joint borrowers both have a condition under which a borrower would qualify to cancel a loan.

*Changes:* The regulations have been revised to reflect that a claim may be filed based on each borrower satisfying the criteria.

Section 682.603 Certification by a Participating School in Connection With a Loan Application

Section 682.603(h)

*Comments:* Several commenters suggested that the wording of § 682.603(h) could be made clearer by substituting "earlier than the 24th day of the student's period of enrollment" for "earlier than 7 days prior to the 31st day of the student's period of enrollment."

*Discussion:* Paragraph (h) of § 682.603 is meant to achieve, in the case of new borrowers subject to delayed delivery of loan proceeds, the appropriate interest limitation Congress intended in § 682.300 using a schedule based on the date of disbursement by the lender. The Secretary agrees that the suggested rewording would more clearly state that requirement.

*Changes:* A change has been made to reflect that a school may not request the disbursement of loan proceeds for a first time borrower who has not previously borrowed a Stafford or SLS loan earlier than the 24th day of the student's period of enrollment.

Section 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

Section 682.604(c)(3)

*Comments:* Some commenters suggested that the Secretary revise the language to codify the Department's earlier guidance that eliminates the separate borrower authorization statement for those students who provide the authorization for electronic fund transfer disbursement on the common loan application.

*Discussion:* The Secretary agrees that this provision does not apply in those instances where the borrower has provided a separate authorization for electronic fund transfer via the common loan application.

*Changes:* The regulations have been revised to provide that the school fulfills this requirement if the borrower has authorized the electronic fund transfer on the common loan application.

Section 682.604(g)(2)(vi)

*Comments:* A commenter recommended that the language be revised to reflect that when a borrower has obtained loans from multiple guarantors, that the institution provide the required updated information to all guarantors listed in the borrower's file.

*Discussion:* The Secretary agrees that updated information should be provided to the guaranty agency or agencies within the specified time.

*Changes:* The regulations have been revised to incorporate the commenter's recommendation.

Section 682.604(h)

*Comments:* A few commenters suggested that the overaward tolerance for the FFEL program be consistent with the $200 overaward allowed in the campus-based programs. Some commenters suggested that the statutory silence on the issue of tolerance does not constitute a prohibition.

*Discussion:* There is no statutory basis for providing a $200 tolerance in the treatment of an FFEL program overaward. Congress has provided specific statutory tolerances in the campus-based overaward provisions and for limited purposes in the FFEL program in section 428G(d) of the HEA. Given these precedents, if Congress had intended to provide for a general tolerance it would have included it in the statute.

*Changes:* None.

**Executive Order 12866**

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained in the NPRM.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of these regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Waiver of Proposed Rulemaking**

In addition to the changes made to part 682 based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include technical changes made by certain legislation, as stated above.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely reflect statutory changes in the regulations and do not establish substantive policy changes, public comment could have no effect. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on these amendments to the regulations is unnecessary and contrary to the public interest.

**Assessment of Educational Impact**

In the notice of proposed regulations, the Secretary requested comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 682**

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: May 25, 1994.

**Richard W. Riley,**

*Secretary of Education.*

The Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

## PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for Part 682 continues to read as follows:

**Authority:** 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.100 is amended by revising paragraphs (a)(2), (a)(3) and (a)(4) to read as follows:

**§ 682.100 The Federal Family Education Loan programs.**

(a)* * *

(2) The Federal Supplemental Loans for Students (SLS) Program, as in effect for periods of enrollment beginning prior to July 1, 1994, which encourages making loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students.

(4) The Federal Consolidation Loan (Consolidation) Program, which encourages making loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received while they were students, under the Federal Insured Student Loan (FISL), Stafford loan, SLS, ALAS (as in effect before October 17, 1986), PLUS, and Perkins Loan programs, the Health Professions Student Loan (HPSL) Program authorized by subpart II of Part A of Title VII of the Public Health Services Act, and Health Education Assistance Loans (HEAL) authorized by Subpart I of Part A of Title VII of the Health Services Act.

* * * * *

3. Section 682.101 is amended by revising paragraph (c) to read as follows:

**§ 682.101 Participation in the FFEL programs.**

* * * * *

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford Loan and, prior to July 1, 1994, the SLS program. Parents of eligible dependent undergraduate students may borrow under the PLUS Program. Borrowers with outstanding Stafford, SLS, FISL, Perkins, HPSL, HEAL, ALAS, or PLUS loans or married couples each of whom have eligible loans under these programs may borrow under the Consolidation Loan Program.

* * * * *

4. Section 682.102 is amended by adding a new sentence at the end of the second sentence in paragraph (d); and by adding a new sentence at the end of paragraph (e)(1) to read as follows:

**§ 682.102 Obtaining and repaying a loan.**

* * * * *

(d) *Consolidation loan application.* * * * In the case of a married couple seeking a Consolidation loan, only the holders for one of the applicants must be contacted for consolidation. * * *

(e) *Repaying a loan.* (1) * * * The borrower's obligation to repay a PLUS loan is cancelled if the student, on whose behalf the parent borrowed, dies. The borrower's obligation to repay all or a portion of his or her loan may be cancelled if the borrower is unable to complete his or her program of study because the school closed or the borrower's eligibility to borrow was falsely certified by the school. The obligation to repay all or a portion of a loan may be forgiven for borrowers who enter certain areas of the teaching or nursing professions or perform certain kinds of national or community service.

* * * * *

5. Section 682.200 is amended by redesignating paragraphs (a)(1)(i) and (a)(1)(ii) as paragraphs (a)(1) and (a)(2) respectively; removing "Eligible institution" from redesignated paragraph (a)(2); revising the definition of "Co-maker" in paragraph (b); revising the definition of "Disbursement" in paragraph (b); revising paragraph (1) of the definition of "Estimated financial assistance"in paragraph (b); adding a new sentence at the end of the definition of "Grace period" in paragraph (b); revising paragraph (2), and redesignating paragraphs (3) and (4) as paragraphs (4) and (5) respectively, and adding a new paragraph 3, in the definition of "Lender" in paragraph (b); revising the definitions of "Repayment period" and "Stafford Loan Program" in paragraph (b); adding, in alphabetical order, new definitions of "Disposable income", "Nonsubsidized Stafford loan", "Satisfactory repayment arrangement", "Subsidized Stafford loan", "Unsubsidized Stafford loan", and "Write-off" in paragraph (b) to read as follows:

**§ 682.200 Definitions.**

* * * * *

*Co-maker.* One of two parents who are joint borrowers on a PLUS loan or one of two individuals who are joint borrowers on a Consolidation loan, each of whom are eligible and who are jointly and severally liable for repayment of the loan.

*Disbursement.* The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of an individual check, a master check that represents loan amounts for more than one borrower, or by electronic funds transfer.

* * * * *

*Disposable income.* That part of a borrower's compensation from an employer and other income from any source that remains after the deduction of any amounts required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required by law to be withheld include, but are not limited, to Federal and State taxes, Social Security contributions, and wage garnishment payments.

* * * * *

*Estimated financial assistance.* (1) The estimated amount of assistance that a student has been or will be awarded for a period of enrollment, beginning on or after July 1, 1993, for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under Chapters 30, 31, 32, and 35 of Title 38 of the United States Code;

(ii) Educational benefits paid under Chapters 106 and 107 of Title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under Chapter 2 of Title 10 and Chapter 2 of Title 37 of the United States Code;

(iv) Benefits paid under Pub. L. 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Pub. L. 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan, Pell Grant and, to the extent funding is available and according to the school's award packaging policy, campus-based aid the student is expected to receive;

(viii) In the case of a PLUS loan, the estimated amount of other Federal student financial aid, including but not limited to, a Stafford loan, Pell Grant and campus-based aid that the student has been or will be awarded.

(2) The estimated amount of assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Nonsubsidized Stafford loan amounts for which interest benefits are not payable;

(B) SLS and PLUS loan amounts; or

(C) Private and state-sponsored loan programs; and

(ii) Perkins loan and College Work-Study funds that the school determines the student has declined.

* * * * *

*Grace period.* * * * For an SLS borrower who also has a Federal Stafford loan on which the borrower has not yet entered repayment, the grace period is an equivalent period after the borrower ceases to be enrolled as at least a half-time student at an eligible institution.

* * * * *

*Lender.* * * *

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union—

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender";

(ii) The phrase "does not have as its primary consumer credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries.

(3) A bank that is subject to examination and supervision by an agency of the United States, making student loans as a trustee, may be an eligible lender if it makes loans under an express trust, operated as a lender in the FFEL programs prior to January 1, 1975, and met the requirements of this paragraph prior to July 23, 1992.

* * * * *

*Nonsubsidized Stafford loan.* A Stafford loan made prior to October 1, 1992 that does not qualify for interest benefits under § 682.301(b) or special allowance payments under § 682.302.

* * * * *

*Repayment period.* (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from the date the first payment of principal is due from the borrower, exclusive of any period of deferment or forbearance.

(2) For unsubsidized Stafford loans, the period that begins on the day after the expiration of the applicable grace period that follows after the student ceases to be enrolled on at least a half-time basis and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. However, payments of interest are the responsibility of the borrower during the in-school and grace period, but may be capitalized by the lender.

(3) For SLS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. The first payment of principal is due within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower but who, has not yet entered repayment on the Stafford loan requests that commencement of repayment on the SLS loan be delayed until the borrower's grace period on the Stafford loan expires. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan. The borrower is responsible for paying interest on the loan during the grace period and periods of deferment, but the interest may be capitalized by the lender.

(4) For Federal PLUS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan.

(5) For Federal Consolidation loans, the period that begins on the date the loan is disbursed and ends no later than 10, 12, 15, 20, 25, or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

*Satisfactory repayment arrangement.* (1) For purposes of regaining eligibility under section 428F(b) of the HEA, the making of six (6) consecutive voluntary full monthly payments on a defaulted loan.

(2) For purposes of consolidating a defaulted loan under 34 CFR 682.201(c)(iii)(C), the making of three (3) consecutive voluntary full monthly payments on a defaulted loan.

(3) The required full monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. Voluntary payments are those payments made directly by the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. On-time means a payment received by the Secretary or a guaranty agency or its agent within 15 days of the scheduled due date.

* * * * *

*Stafford Loan Program.* The loan program authorized by Title IV–B of the Act which encourages the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

* * * * *

*Subsidized Stafford loan.* A loan authorized under section 428(b) of the Act for borrowers who qualify for interest benefits under § 682.301(b).

* * * * *

*Unsubsidized Stafford loan.* A loan made after October 1, 1992, authorized under section 428H of the Act for borrowers who do not qualify for interest benefits under § 682.301(b).

*Write-off.* Cessation of collection activity on a defaulted FFEL loan due to a determination in accordance with applicable standards that no further collection activity is warranted.

6. Section 682.201 is amended by revising paragraph (a)(2); revising paragraphs (b) introductory text and (b)(1); removing "and" at the end of paragraph (b)(5); removing the period at the end of paragraph (b)(6), and adding in its place, "; and"; adding a new paragraph (b)(7); and revising paragraph (c) to read as follows:

**§ 682.201 Eligible borrowers.**

(a) * * *

(2) In the case of any student who, for a period of enrollment that begins prior to July 1, 1994, seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must have—

(i) Received a determination of need for a subsidized Stafford loan, and if determined to have need in excess of $200, have filed an application with a lender for a subsidized Stafford loan;

(ii) Filed an application with a lender for an unsubsidized Stafford loan up to the Stafford loan annual maximum unless the school declines to certify such an application under section 428(a)(2)(F) of the HEA; and

(iii) Received a certification of graduation from a school providing

secondary education or the recognized equivalent;

* * * * *

(b) *Parent borrower.* A parent borrower, is eligible to receive a PLUS Program loan, other than a loan made under § 682.209(e), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR Part 668;

* * * * *

(7) (i) In the case of a Federal PLUS loan made on or after July 1, 1993, does not have an adverse credit history.

(ii) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national credit bureau. The credit report must be secured within a timeframe that would ensure the most accurate, current representation of the borrower's credit history before the first day of the period of enrollment for which the loan is intended.

(iii) Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history based on the credit report if—

(A) The applicant is considered 90 or more days delinquent on the repayment of a debt;

(B) The applicant has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt, during the five years preceding the date of the credit report.

(iv) Nothing in this paragraph precludes the lender from establishing more restrictive credit standards to determine whether the applicant has an adverse credit history.

(v) The absence of any credit history is not an indication that the applicant has an adverse credit history and is not to be used as a reason to deny a PLUS loan to that applicant.

(vi) The lender must retain documentation demonstrating its basis for determining that extenuating circumstances existed. This documentation may include, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

(c) *Consolidation Program Borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) For a Consolidation loan made on or after January 1, 1993 but prior to July 1, 1994, has an outstanding indebtedness of not less than $7,500 that are eligible for consolidation under § 682.100;

(ii) Has ceased, or, in the case of a PLUS borrower, the dependent student on whose behalf the parent is borrowing has ceased, at least half-time enrollment at a school;

(iii) Is, on the loans being consolidated—

(A) In a grace period preceding repayment on the loans being consolidated;

(B) Is in repayment status; or

(C) In a default status and has made satisfactory repayment arrangements with the holder on a defaulted loan being consolidated;

(iv) Certifies that no other application for a Consolidation loan is pending;

(v) Agrees to notify the holder of any changes in address; and

(vi) Certifies that the lender holds an outstanding loan of the borrower that is being consolidated or that the borrower has unsuccessfully sought a loan from the holders of the outstanding loans and was unable to secure a Consolidation loan from the holder.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each—

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Meets the requirements of paragraph (c)(1) of this section, and only one must have met the requirements of paragraph (c)(1)(vi) of this section.

(3) To be eligible to receive a Consolidation loan, in the case of a student, parent, or Consolidation loan borrower who is currently in default on an FFEL Program loan, the borrower must have made satisfactory repayment arrangements.

(4) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except—

(i) With respect to student loans received after the date the Consolidation loan is made; or

(ii) Eligible loans received prior to the date the Consolidation loan was made can be added to the Consolidation loan during the 180-day period after the making of the Consolidation loan.

7. Section 682.204 is revised to read as follows:

**§ 682.204 Maximum loan amounts.**

(a) *Stafford Loan Program annual limits.* (1) In the case of a dependent undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program and the Direct Stafford Loan Program may not exceed—

(i) $2,625 for a program whose length is at least a full academic year in length;

(ii) $1,750 for a program whose length is at least two-thirds but less than a full academic year in length; and

(iii) $875 for a program whose length is at least one-third but less than two-thirds of an academic year length.

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program may not exceed—

(i) $3,500 for a program whose length is at least a full academic year in length; or

(ii) For a Stafford loan first disbursed on or after July 1, 1994 for a period of enrollment beginning on or after July 1, 1994, if the student is enrolled in a program, with less than a full academic year remaining, a prorated amount that bears the same ratio to $3,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(3) In the case of a student who has successfully completed the first and second year of a program of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for academic year of study under the Stafford Loan and Direct Stafford Loan Program may not exceed—

(i) $5,500 for a program whose length is at least an academic year in length;

(ii) For a Stafford loan first disbursed on or after July 1, 1994 for a period of enrollment beginning on or after July 1, 1994, if the student is enrolled in a program with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(4) In the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for an academic year of study may not exceed the amount in paragraph (a)(3)(i) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the

Stafford Loan Program, in combination with any amount borrowed under the Direct Stafford Loan Program, may not exceed $8,500.

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Stafford Loan Program and loans received under the Direct Stafford Loan Program may not exceed—

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(2) $65,000, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Unsubsidized Stafford Loan Program.* In the case of a dependent graduate student, the total amount the student may borrow for any period of study for the Unsubsidized Stafford Loan Program and Direct Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraph (b) of this section, an independent undergraduate student, graduate or professional student, or certain dependent undergraduate students may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program, in combination with Unsubsidized Stafford loans, for any academic year of study—

(1) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(i) $4,000 for enrollment in a program whose length is at least a full academic year in length;

(ii) $2,500 for enrollment in a program whose length is at least two-thirds but less than a full academic year in length;

(iii) $1,500 for enrollment in a program whose length is at least one-third but less than two-thirds of an academic year in length;

(2) In the case of a student who has successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program, may not exceed—

(i) $5,000 for enrollment in a program whose length is at least a full academic year;

(ii) If the student is enrolled in a program with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,000 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year;

(3) In the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for an academic year under the Unsubsidized Stafford Loan and Direct Unsubsidized Stafford Loan Program may not exceed the amount in paragraph (d)(2)(i) of this section; and

(4) In the case of a graduate or professional student, may not exceed $10,000.

(e) *Unsubsidized Stafford Loan Program aggregate limits.* The total unpaid principal amount of Stafford Loans, Direct Stafford Loans, Unsubsidized Stafford Loans, Direct Unsubsidized Stafford Loans and SLS Loans, may not exceed—

(1) $46,000 for an undergraduate student; and

(2) $138,500 for a graduate or professional student.

(f) *SLS Program annual limit.* (1) In the case of a loan for which the first disbursement is made prior to July 1, 1993, the total amount of all SLS loans that a student may borrow for any academic year may not exceed $4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to § 682.603 by the school on or after January 1, 1990—

(i) $2,500 for a student enrolled in a program whose length is at least two-thirds of an academic year but less than a full academic year in length;

(ii) $1,500 for a student enrolled in a program whose length is less than two-thirds of an academic year in length; and

(iii) $0 for a student enrolled in a program whose length is less than one-third of an academic year in length.

(2) In the case of a loan for which a first disbursement is made on or after July 1, 1993, the total amount a student may borrow for an academic year under the SLS program—

(i) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(A) $4,000 for enrollment in a program whose length is at least a full academic year in length;

(B) $2,500 for enrollment in a program whose length is at least two-thirds but less than a full academic year in length;

(C) $1,500 for enrollment in a program whose length is least one-third but less than two-thirds of an academic year in length;

(ii) Except as provided in paragraph (f)(4) of this section, in the case of a student who successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program, may not exceed—

(A) $5,000 for enrollment in a program whose length is at least a full academic year;

(B) $3,325 for enrollment in a program whose length is at least two-thirds of an academic year but less than a full academic year in length; and

(C) $1,675 for enrollment in a program whose length is at least one-third of an academic year but less than two-thirds of an academic year; and

(iii) In the case of a graduate or professional student, may not exceed $10,000.

(4) For a period of enrollment beginning after October 1, 1993, but prior to July 1, 1994 for which the first disbursement is made prior to July 1, 1994, in the case of a student who has successfully completed the first and second years of a program but has not successfully completed the remainder of a program of undergraduate education—

(i) $5,000; or

(ii) If the student is enrolled in a program, the remainder of which is less than a full academic year, the maximum annual amount that the study may receive may not exceed the amount that bears the same ratio to the amount in paragraph (f)(4)(i) of this section as the remainder measured in semester, trimester, quarter, or clock hours bears to one academic year.

(g) *SLS Program aggregate limit.* The total unpaid principal amount of SLS Program loans made to—

(1) An undergraduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993; or

(ii) $23,000, for loans for which the first disbursement was made on or after July 1, 1993; and

(2) A graduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993; or

(ii) $73,000, for loans for which the first disbursement was made on or after July 1, 1993 including loans for undergraduate study.

(h) *PLUS Program annual limit.* The total amount of all PLUS Program loans that parents may borrow on behalf of each dependent student for any

academic year of study may borrow for enrollment in an eligible program of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

(i) *Minimum loan interval.* The annual loan limits applicable to a student apply to the length of the school's academic year.

(j) *Treatment of Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford loan, Unsubsidized Stafford loan, Direct Stafford loan, Direct Unsubsidized loan, SLS, PLUS, Perkins Loan, or HPSL program must equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(k) *Maximum loan amounts.* In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(l) In determining a Stafford loan amount in accordance with § 682.204 (a), (c) and (d), the school must use the definition of academic year in 34 CFR 668.2.

8. Section 682.206 is amended by revising the introductory text in paragraph (c)(2); and revising paragraph (e)(2) to read as follows:

**§ 682.206 Due diligence in making a loan.**

* * * * *

(c) * * *

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, the lender must review the data on the student's cost of attendance and estimated financial assistance that is provided by the school. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of—

* * * * *

(e) * * *

(2) A Federal PLUS Program loan and Federal Consolidation Program Loan may be made to two eligible borrowers who agree to be jointly and severally liable for repayment of the loan as co-makers.

* * * * *

9. Section 682.207 is amended by revising paragraphs (b)(1)(v) (A) and (B),and adding a new paragraph (b)(1)(v)(D) to read as follows:

**§ 682.207 Due diligence in disbursing a loan.**

* * * * *

(b)(1) * * *

(v) * * *

(A) Except as provided in paragraph (b)(1)(v) (C)(*1*) and (D) of this section, directly to the school;

(B) In the case of a Federal PLUS loan—

(*1*) By electronic funds transfer or master check from the lender to the eligible institution to a separate account maintained by the school as trustee for the lender; or

(*2*) By a check from the lender that is made co-payable to the institution and the parent borrower directly to the eligible institution.

* * * * *

(D) In the case of a student enrolled in an eligible foreign school, if the student requests—

(*1*) Directly to the student; or

(*2*) To the institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

* * * * *

10. Section 682.209 is amended by revising paragraph (c)(2) to read as follows:

**§ 682.209 Repayment of a loan.**

* * * * *

(c) * * *

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance as described in § 682.211, or deferment described in § 682.210, has been approved.

* * * * *

11. Section 682.300 is amended by revising the section heading; revising paragraph (a); revising paragraph (b)(1)(i); and revising paragraph (c) to read as follows:

**§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.**

(a) *General.* The Secretary pays a lender a portion of the interest on a subsidized Stafford loan and, on a Consolidation loan that only consolidated subsidized Stafford loans, on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) * * *

(1) * * *

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraphs (b)(2) and (c) of this section.

* * * * *

(c) *Interest not covered.* The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable;

(2) Interest paid on behalf of the borrower by a guaranty agency;

(3) Interest that accrues on the first disbursement of a loan for any period that is earlier than—

(i) In the case of a subsidized Stafford loan disbursed by a check, 10 days prior to the first day of the period of enrollment for which the loan is intended or, if the loan is disbursed after the first day of the period of enrollment, 3 days after the disbursement date on the check; or

(ii) In the case of a loan disbursed by electronic funds transfer, 3 days prior to the first day of the period of enrollment or, if the loan is disbursed after the first day of the period of enrollment, 3 days after disbursement.

(4) In the case of a loan disbursed on or after October 1, 1992, interest on a loan if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer has not been released from the restricted account maintained by the school before that date.

* * * * *

12. Section 682.301 is amended by revising the section heading; revising paragraph (a)(1); adding new paragraphs (a)(3) and (a)(4); and revising paragraph (b) introductory text to read as follows:

**§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.**

(a) * * *

(1) To qualify for benefits on a Stafford loan, a borrower must demonstrate financial need in accordance with Part F of the Act.

* * * * *

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender on or after January 1, 1993 but prior to August 10, 1993.

(4) A Consolidation loan borrower qualifies for interest benefits only if the

loan consolidates subsidized Stafford loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a loan application to the lender. The application must include a certification from the student's school of the following information:

* * * * *

13. Section 682.302 is amended by revising paragraphs (b), (c)(1)(iii), (c)(2) introductory text, (c)(3)(i) introductory text, (c)(3)(ii) introductory text, and adding paragraph (c)(3)(iii) to read as follows:

**§ 682.302 Payment of special allowance on FFEL loans.**

* * * * *

(b) *Eligible loans.* (1) Except for nonsubsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraph (b)(2) or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 or under § 682.209 (e) or (f), no special allowance is paid for any period for which the interest rate determined under § 682.202(a)(2)(iv)(A) for that loan does not exceed—

(i) 12 percent in the case of a Federal SLS or PLUS loan made prior to October 1, 1992;

(ii) 11 percent in the case of a Federal SLS loan made on or after October 1, 1992; or

(iii) 10 percent in the case of a Federal PLUS loan made on or after October 1, 1992.

(3) In the case of a subsidized Stafford loan disbursed on or after October 1, 1992, the Secretary does not pay special allowance on a disbursement if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer has not been released from the restricted account maintained by the school before that date.

(c) * * *

(1) * * *

(iii) Adding—

(A) 3.1 percent to the resulting percentage for a loan made on or after October 1, 1992;

(B) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986, but before October 1, 1992;

(C) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(D) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or a loan described in paragraph (c)(2) of this section; or

(E) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

* * * * *

(2) The special allowance rate determined under paragraph (c)(1)(iii)(D) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

* * * * *

(3)(i) Subject to paragraphs (c)(3) (ii) and (iii) of this section, the special allowance rate is one-half of the rate calculated under paragraph (c)(1)(iii)(D) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

* * * * *

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made prior to October 1, 1992, may not be less than—

* * * * *

(iii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made on or after October 1, 1992, may not be less than 9½ percent minus the applicable interest rate.

* * * * *

14. Section 682.400 is amended by revising paragraph (b) introductory text; revising paragraph (b)(1)(i); and adding a new paragraph (b)(4) to read as follows:

**§ 682.400 Agreements between a guaranty agency and the Secretary.**

* * * * *

(b) There are four agreements:

(1) * * *

(i) Borrowers whose Stafford and Consolidation loans that consolidate only subsidized Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

* * * * *

(4) *Loan Rehabilitation Agreement.* A guaranty agency must have an agreement for rehabilitating a loan for which the Secretary has made a reinsurance payment under section 428(c)(1) of the Act.

* * * * *

15. Section 682.401 is amended by revising paragraphs (b)(1) and (b)(2); redesignating paragraphs (b)(4) through (b)(24) as paragraphs (b)(5) through (b)(25), respectively; adding a new paragraph (b)(4); revising redesignated paragraph (b)(6); revising redesignated paragraph (b)(14); revising redesignated paragraph (b)(16)(i) introductory text; adding a new paragraph (b)(16)(iii); adding new paragraphs (b)(24); revising paragraph (c); redesignating paragraphs (e)(2) and (e)(3) as paragraphs (e)(3) and (e)(4) respectively; and adding a new paragraph (e)(2) to read as follows:

**§ 682.401 Basic program agreement.**

* * * * *

(b) * * *

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all Stafford, SLS, PLUS loans made to a borrower may not exceed the amounts set forth in § 682.204 (b), (e), and (h).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in § 682.204 (a), (c), (d), (f), and (g).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either—

(A) A period of not less than that attributable to the academic year; or

(B) A period attributable to the academic year in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iii) The amount of a loan guaranteed may not exceed the amount set forth in § 682.204(i).

* * * * *

(4) *Reinstatement of borrower eligibility.* For a borrower's loans held by a guaranty agency on which a reinsurance claim has been paid by the Secretary, the guaranty agency must afford a defaulted borrower, upon the borrower's request, renewed eligibility for Title IV assistance once the borrower has made satisfactory repayment

arrangements as that term is defined in § 682.200.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include consideration of the borrower's and spouse's disposable income and necessary expenses including, but not limited to, housing, utilities, food, medical costs, dependent care costs, work-related expenses and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination, if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater.

(C) Be based on the documentation provided by the borrower or other sources including, but not limited to—

(*1*) Evidence of current income (e.g. proof of welfare benefits, Social Security benefits, Supplemental Security Income, Workers' Compensation, child support, veterans' benefits, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(*2*) Evidence of current expenses (e.g. a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(*3*) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances upon providing the documentation specified in paragraph (b)(4)(i)(C) of this section.

(iii) A guaranty agency must provide the borrower with a written statement of the reasonable and affordable payment amount required for the reinstatement of the borrower's eligibility for Title IV student assistance, and provide the borrower with an opportunity to object to those terms.

(iv) A guaranty agency must provide the borrower with written information regarding the possibility of loan rehabilitation if the borrower makes six additional reasonable and affordable monthly payments after making payments to regain eligibility for Title IV assistance and the consequences of loan rehabilitation.

* * * * *

(6) *School eligibility.* (i) *General.* A school that has a program participation agreement in effect with the Secretary under § 682.600 is eligible to participate in the program of the agency under reasonable criteria established by the guaranty agency, and approved by the Secretary, under paragraph (d)(2) of this section, except to the extent that—

(A) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR Part 668;

(B) The Secretary upholds the limitation, suspension, or termination of a school by a guaranty agency and extends that sanction to all guaranty agency programs under section 432(h)(3) of the Act or § 682.713;

(C) The school is ineligible under sections 428A(a)(2) or 435(a)(2) of the Act;

(D) There is a State constitutional prohibition affecting the school's eligibility;

(E) The school's programs consist of study solely by correspondence;

(F) The agency determines, subject to the agreement of the Secretary, that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR Part 668;

(G) The school fails to make timely refunds to students as required in § 682.607(c);

(H) The school has not satisfied, within 30 days of issuance, a final judgment obtained by a student seeking a refund;

(I) The school or an owner, director, or officer of the school is found guilty or liable in any criminal, civil, or administrative proceeding regarding the obtaining, maintenance, or disbursement of State or Federal student grant, loan, or work assistance funds; or

(J) The school or an owner, director, or officer of the school has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of State or Federal student financial assistance funds.

(ii) *Limitation by a guaranty agency of a school's participation.* For purposes of this paragraph, a school that is subject to limitation of participation in the guaranty agency's program may be either a school that is applying to participate in the agency's program for the first time, or a school that is renewing its application to continue participation in the agency's program. A guaranty agency may limit the total number of loans or the volume of loans made to students attending a particular school, or otherwise establish appropriate limitations on the school's participation, if the agency makes a determination that the school does not satisfy—

(A) The standards of financial responsibility defined in 34 CFR 668.5; or

(B) The standards of administrative capability defined in 34 CFR 668.16.

(iii) *Limitation, suspension, or termination of school eligibility.* A guaranty agency may limit, suspend, or terminate the participation of an eligible school. If a guaranty agency limits, suspends, or terminates the participation of a school from the agency's program, the Secretary applies that limitation, suspension, or termination to all locations of the school.

(iv) *Condition for guaranteeing loans for students attending a school.* The guaranty agency may require the school to execute a participation agreement with the agency and to submit documentation that establishes the school's eligibility to participate in the agency's program.

* * * * *

(14) *Guaranty agency verification of default data.* A guaranty agency must respond to an institution's written request for verification of its default rate data for purposes of an appeal pursuant to 34 CFR 668.15(g)(1)(i) within 15 working days of the date the agency receives the institution's written request pursuant to 34 CFR 668.15(g)(7), and simultaneously provide a copy of that response to the Secretary's designated Department official.

* * * * *

(16) * * *

(i) Except as provided in paragraph (b)(16)(iii) of this section, the guaranty agency must allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

* * * * *

(iii) The guaranty agency must allow a loan to be assigned under paragraph (b)(16)(i) of this section, following the first disbursement of the loan if the assignment does not result in a change in the identity of the party to whom payments must be made.

* * * * *

(24) *Information on loan sales or transfers.* The guaranty agency must, upon the request of an eligible school, furnish to the school last attended by the student, information with respect to the sale or transfer of a borrower's loan prior to the beginning of the repayment period, including—

(i) Notice of the assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party by which contact may be made

with the holder concerning repayment of the loan; and

(iv) The telephone number of the assignee, or if the assignee uses a lender servicer, another appropriate number for borrower inquiries.

* * * * *

(c)(1) *Lender-of-last-resort.* The guaranty agency must ensure that it or an eligible lender described in section 435(d)(1)(D) of the Act serves as a lender-of-last-resort in the State in which it is the principal guaranty agency, as defined in § 682.800(d).

(2) The lender-of-last-resort must make a subsidized Stafford loan to any eligible student who satisfies the lender's eligibility requirements and—

(i) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least $200; and

(ii) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made under paragraph (c)(1) of this section to be made by another eligible lender.

(4) The guaranty agency must develop policies and operating procedures for its lender-of-last-resort program that provide for the accessibility of lender-of-last-resort loans. These policies and procedures must be submitted to the Secretary for approval as required under paragraph (d)(2) of this section. The policies and procedures for the agency's lender-of-last-resort program must ensure that—

(i) The guaranty agency will serve eligible students attending any eligible school;

(ii) The program establishes operating hours and methods of application designed to facilitate application by students; and

(iii) Information about the availability of loans under the program is made available to schools in the State;

(iv) Appropriate steps are taken to ensure that borrowers receiving loans under the program are appropriately counseled on their loan obligation;

(v) The guaranty agency will respond to a student within 60 days after the student submits an original complete application; and

(vi) Borrowers are not required to obtain more than two objections from eligible lenders prior to requesting assistance under the lender-of-last-resort program.

* * * * *

(e) * * *

(2)(i) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include, but are not limited to—

(A) Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;

(B) Performing functions normally performed by lenders without appropriate compensation;

(C) Providing equipment or supplies to lenders at below market cost or rental; or

(D) Offering to pay a lender, that does not hold loans guaranteed by the agency, a fee for each application forwarded for the agency's guarantee.

(ii) For the purposes of this section, the terms "premium", "inducement", and "incentive" do not include services directly related to the enhancement of the administration of the FFEL Program the guaranty agency generally provides to lenders that participate in its program. However, the terms "premium", "inducement", and "incentive" do apply to other activities specifically intended to secure a lender's participation in the agency's program.

* * * * *

16. A new § 682.405 is added to read as follows:

**§ 682.405 Loan rehabilitation agreement.**

(a) *General.* (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans so that the loan may be purchased, if practicable, by an eligible lender and removed from default status.

(2) A loan is considered to be rehabilitated only after the borrower has made one voluntary reasonable and affordable full payment each month and the payment is received by a guaranty agency or its agent within 15 days of the scheduled due date for 12 consecutive months in accordance with this section, and the loan has been sold to an eligible lender.

(3) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation.

(4) A borrower who wishes to rehabilitate a loan on which a judgment has been entered must sign a new promissory note prior to the sale of the loan to an eligible lender.

(b) *Terms of agreement.* In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

(1) A borrower may request the rehabilitation of the borrower's defaulted FFEL loan held by the guaranty agency. The borrower must make one voluntary full payment each month for 12 consecutive months to be eligible to have the defaulted loans rehabilitated. For purposes of this section, "full payment" means a reasonable and affordable payment agreed to by the borrower and the agency. The required amount of such monthly payment may be no more than is reasonable and affordable based upon the borrower's total financial circumstances. Voluntary payments are those made directly by the borrower regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the twelve-(12-)month payment period.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater. However, $50.00 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable; and

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(1) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) The agency must include any payment made under § 682.401(b)(4) in determining whether the 12 consecutive payments required under paragraph (b)(1) of this section have been made.

(iii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(i)(C) of this section.

(iv) A guaranty agency must provide the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before a borrower's account can be considered for repurchase by an eligible lender. The statement must inform borrowers of the consequences of having their loans rehabilitated (e.g. credit clearing, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

(v) A guaranty agency must provide the borrower with an opportunity to object to terms of the rehabilitation of the borrower's defaulted loan.

(2) The guaranty agency must report to all national credit bureaus within 90 days of the date the loan was rehabilitated that the loan is no longer in a default status.

(3) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans made under the same loan type and provides for the borrower to make monthly payments at least as great as the average of the 12 consecutive monthly payments received by the guaranty agency. For the purposes of the maximum loan repayment period, the lender must treat the first payment made under the 12 consecutive payments as the first payment under the 10-year maximum.

(Authority: 20 U.S.C. 1078–6)

17. Section 682.406 is amended by removing "and" at the end of paragraph (a)(12); removing the period at the end of paragraph (a)(13) and adding in its place, "; and" and adding a new paragraph (a)(14) to read as follows:

**§ 682.406 Conditions of reinsurance coverage.**

(a) * * *

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the guaranty agency under § 682.411(g) to locate the borrower through the use of reasonable skip-tracing techniques.

* * * * *

18. Section 682.407 is amended by adding a new paragraph (e) to read as follows:

**§ 682.407 Administrative cost allowance for guaranty agencies.**

* * * * *

(e) An administrative cost allowance improperly paid on a loan to a guaranty agency must be deducted by the agency from the amount reflected in the following quarter's ED form 1130 when it is submitted to the Department for payment.

* * * * *

19. Section 682.409 is amended by revising paragraph (a); revising paragraph (c)(1); and adding a new paragraph (c)(6) to read as follows:

**§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.**

(a) (1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary will direct a guaranty agency to promptly assign to the Secretary any loan held by the agency on which the agency has received payment under § 682.402(d), 682.402(i), or 682.404. An orderly transition from the FFEL program to the Federal Direct Student Loan (FDSL) Program and the collection of unpaid loans owed by Federal employees by Federal salary offset are, among other things, deemed to be in the Federal fiscal interest. Unless the Secretary notifies an agency, in writing, that other loans must be assigned to the Secretary, an agency must assign any loan that meets all of the following criteria as of April 15 of each year:

(i) The unpaid principal balance is at least $100.

(ii) For each of the two fiscal years following the fiscal year in which these regulations are effective, the loan, and any other loans held by the agency for that borrower, have been held by the agency for at least four years; for any subsequent fiscal year such loan must have been held by the agency for at least five years.

(iii) A payment has not been received on the loan in the last year.

(iv) A judgment has not been entered on the loan against the borrower.

(2) If the agency fails to meet a fiscal year recovery rate standard under paragraph (a)(2)(ii) of this section for a loan type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to assign in addition to those loans described in paragraph (a)(1) of this section, loans in amounts needed to satisfy the requirements of paragraph (a)(2)(iii) or (a)(3)(i) of this section.

(i) *Calculation of fiscal year loan type recovery rate.* A fiscal year loan type recovery rate for an agency is determined by dividing the amount collected on defaulted loans, including collections by Federal Income Tax Refund Offset, for each loan program (i.e., the Stafford, PLUS, SLS, and Consolidation loan programs) by the agency for loans of that program (including payments received by the agency on loans under § 682.401(b)(4) and § 682.409 and the amounts of any loans purchased from the guaranty agency by an eligible lender) during the most recent fiscal year for which data are available by the total of principal and interest owed to an agency on defaulted loans for each loan program at the beginning of the same fiscal year, less accounts permanently assigned to the Secretary through the most recent fiscal year.

(ii) *Fiscal year loan type recovery rates standards.* (A) If, in each of the two fiscal years following the fiscal year in which these regulations are effective, the fiscal year loan type recovery rate for a loan program for an agency is below 80 percent of the average recovery rate of all active guaranty agencies in each of the same two fiscal years for that program type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to make additional assignments in accordance with paragraph (a)(2)(iii) of this section.

(B) In any subsequent fiscal year the loan type recovery rate standard for a loan program must be 90 percent of the average recovery rate of all active guaranty agencies.

(iii) *Non-achievement of loan type recovery rate standards.*

(A) Unless the Secretary determines under paragraph (a)(2)(iv) of this section

that protection of the Federal fiscal interest requires that a lesser amount be assigned, upon notice from the Secretary, an agency with a fiscal year loan type recovery rate described in paragraph (a)(2)(ii) of this section must promptly assign to the Secretary a sufficient amount of defaulted loans, in addition to loans to be assigned in accordance with paragraph (a)(1) of this section, to cause the fiscal year loan type recovery rate of the agency that fiscal year to equal or exceed the average rate of all agencies described in paragraph (a)(2)(ii) of this section when recalculated to exclude from the denominator of the agency's fiscal year loan type recovery rate the amount of these additional loans.

(B) The Secretary, in consultation with the guaranty agency, may require the amount of loans to be assigned under paragraph (a)(2) of this section to include particular categories of loans that share characteristics that make the performance of the agency fall below the appropriate percentage of the loan type recovery rate as described in paragraph (a)(2)(ii) of this section.

(iv) *Calculation of loan type recovery rate standards.* The Secretary, within 30 days after the date for submission of the second quarterly report from all agencies, makes available to all agencies a mid-year report, showing the recovery rate for each agency and the average recovery rate of all active guaranty agencies for each loan type. In addition, the Secretary, within 120 days after the beginning of each fiscal year, makes available a final report showing those rates and the average rate for each loan type for the preceding fiscal year.

(3)(i) *Determination that the protection of the Federal fiscal interest requires assignments.* Upon petition by an agency submitted within 45 days of the notice required by paragraph (a)(2)(iii)(A) of this section, the Secretary may determine that protection of the Federal fiscal interest does not require assignment of all loans described in paragraph (a)(1) of this section or of loans in the full amount described in paragraph (a)(2)(iii) of this section only after review of the agency's petition. In making this determination, the Secretary considers all relevant information available to him (including any information and documentation obtained by the Secretary in reviews of the agency or submitted to the Secretary by the agency) as follows:

(A) For each of the two fiscal years following the fiscal year in which these regulations are effective, the Secretary considers information presented by an agency with a fiscal year loan type recovery rate above the average rate of all active agencies to demonstrate that the protection of the Federal fiscal interest will be served if any amounts of loans of the loan type required to be assigned to the Secretary under paragraph (a)(1) of this section are retained by that agency. For any subsequent fiscal year, the Secretary considers information presented by an agency with a fiscal year recovery rate 10 percent above the average rate of all active agencies.

(B) The Secretary considers information presented by an agency that is required to assign loans under paragraph (a)(2) of this section to demonstrate that the protection of the Federal fiscal interest will be served if the agency demonstrates that its compliance with § 682.401(b)(4) and § 682.405 has reduced substantially its fiscal year loan type recovery rate or rates or if the agency is not required to assign amounts of loans that would otherwise have to be assigned.

(C) The information provided by an agency pursuant to paragraphs (a)(3)(i)(A) and (B) of this section may include, but is not limited to the following:

(*1*) The fiscal year loan type recovery rate within such school sectors as the Secretary may designate for the agency, and for all agencies.

(*2*) The fiscal year loan type recovery rate for loans for the agency and for all agencies categorized by age of the loans as the Secretary may determine.

(*3*) The performance of the agency, and all agencies, in default aversion.

(*4*) The agency's performance on judgment enforcement.

(*5*) The existence and use of any state or guaranty agency-specific collection tools.

(*6*) The agency's level of compliance with §§ 682.409 and 682.410(b)(6).

(*7*) Other factors that may affect loan repayment such as State or regional unemployment and natural disasters.

(ii) *Denial of an agency's petition.* If the Secretary does not accept the agency's petition, the Secretary provides, in writing, to the agency the Secretary's reasons for concluding that the Federal fiscal interest is best protected by requiring the assignment.

* * * * *

(c)(1) A guaranty agency must assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency must submit this information and documentation in the form (including magnetic media) and format specified by the Secretary.

* * * * *

(6) The Secretary may accept the assignment of a loan without all of the documents listed in paragraph (c)(4) of this section. If directed to do so, the agency must retain these documents for submission to the Secretary at some future date.

* * * * *

20. Section 682.410 is amended by revising paragraphs (a)(1) and (a)(2); and adding paragraphs (a)(6), (a)(7), and (a)(8) to read as follows:

**§ 682.410 Fiscal, administrative, and enforcement requirements.**

(a) * * *

(1) *Reserve fund assets.* The guaranty agency must establish and maintain a reserve fund to be used solely for the FFEL Program to which the guaranty agency must credit—

(i) The total amount of insurance premiums collected;

(ii) Funds appropriated by a State for the agency's loan guaranty program, including matching funds under section 422(a) of the Act;

(iii) Federal advances obtained under sections 422(a) and (c) of the Act;

(iv) Federal payments for default, bankruptcy, death and disability, closed schools and false certification claims;

(v) Supplemental preclaims assistance payments;

(vi) Administrative cost allowance payments received under § 682.407;

(vii) Funds collected by the guaranty agency on FFELP loans for which the guaranty agency has paid claims;

(viii) Investment earnings on the reserve fund; and

(ix) Funds received by the guaranty agency from any other source for the agency's loan guaranty program.

(2) *Uses of reserve fund assets.* A guaranty agency may only use the assets of the reserve fund established under paragraph (a)(1) of this section to pay—

(i) Insurance claims;

(ii) Operating costs, including payments necessary in administering loan collections, preclaims assistance, monitoring enrollment and repayment status and any other loan guaranty activities under this part;

(iii) Lenders that participate in a loan referral service under section 428(e) of the Act;

(iv) The Secretary's equitable share of collections;

(v) Federal advances and other funds owed to the Secretary;

(vi) Reinsurance fees;

(vii) Insurance premiums related to cancelled loans; and

(viii) Any other amounts authorized or directed by the Secretary.

* * * * *

(6) *Minimum reserve fund level.* The guaranty agency must maintain a

current minimum reserve level of not less than—

(i) .5 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1993;

(ii) .7 percent of the amount of loans outstanding, for the fiscal year that begins in calendar year 1994;

(iii) .9 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1995; and

(iv) 1.1 percent of the amount of loans outstanding, for each fiscal year of the agency that begins on or after January 1, 1996.

(7) For purposes of this section, *reserve fund level* means—

(i) The total of the reserve fund assets as defined in paragraph (a)(1) of this section, minus

(ii) The total of the amount of the reserve fund assets used in accordance with paragraphs (a)(2) and (a)(3) of this section.

(8) For purposes of this section, *amount of loans outstanding* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

(C) Payment in full has been made by the borrower;

(D) Reinsurance coverage has been lost and cannot be regained; and

(E) The agency paid claims.

* * * * *

21. Section 682.414 is amended by revising paragraph (a)(3)(iii) and adding a new paragraph (a)(3)(iv) to read as follows:

**§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.**

(a) * * *

(3) * * *

(iii) Except as provided in paragraph (a)(3)(iv) of this section, a lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(iv) A lender shall retain a copy of the audit report for not less than five years after the report is issued.

* * * * *

21. Section 682.507 is amended by revising paragraph (a)(2) to read as follows:

**§ 682.507 Due diligence in collecting a loan.**

(a) * * *

(2) If two borrowers are liable for repayment of a Federal PLUS or Consolidation loan as co-makers, the lender must follow these procedures with respect to both borrowers.

* * * * *

22. Section 682.511 is amending by revising paragraph (a)(2) to read as follows:

**§ 682.511 Procedures for filing a claim.**

(a) * * *

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, or a Consolidation loan was obtained jointly by a married couple, the reason for filing a claim must hold true for both applicants, or each applicant must have satisfied a claimable criterion at the time of the request for discharge of the loan.

* * * * *

23. Section 682.601 is amended by removing "and" at the end of paragraph (a)(4); removing the period at the end of paragraph (a)(5) and adding in its place, "; and"; and adding new paragraphs (a)(6) and (a)(7) to read as follows:

**§ 682.601 Rules for a school that makes or originates loans.**

(a) * * *

(6) The school's cohort default rate as calculated under § 668.17 may not exceed 15 percent; and

(7) Except for reasonable administrative expenses directly related to the FFEL Program, the school must use payments received under § 682.300 and § 682.302 for need-based grant programs for its students.

* * * * *

24. Section 682.603 is amended by adding new paragraphs (f)(3) and (h) to read as follows:

**§ 682.603 Certification by a participating school in connection with a loan application.**

* * * * *

(f) * * *

(3) In certifying a Stafford or SLS loan amount in accordance with § 682.204—

(i) A program of study must be considered at least one full academic year if—

(A) The number of weeks of instruction time is at least 30 weeks; and

(B) The number of clock hours is at least 900, the number of semester or trimester hours is at least 24, or the number of quarter hours is at least 36.

(ii) A program of study must be considered two-thirds ⅔ of an academic year if—

(A) The number of weeks of instruction is at least 20 weeks; and

(B) The number of clock hours is at least 600, the number of semester or trimester hours is at least 16, or the number of quarter hours is at least 24.

(iii) A program of study must be considered one-third ⅓ of an academic year if—

(A) The number of weeks of instruction time is at least 10 weeks; and

(B) The number of clock hours is at least 300, the number of semester or trimester hours is at least 8, or the number of quarter hours is at least 12.

* * * * *

(h) Pursuant to paragraph (b)(5) of this section, a school may not request the disbursement of loan proceeds, for a borrower who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan, earlier that the 24th day of the student's period of enrollment.

25. Section 682.604 is amended by revising paragraph (c)(3) introductory text; removing paragraph (g)(2)(i); redesignating paragraphs (g)(2)(ii) through (g)(2)(vi), as paragraphs (g)(2)(i) through (g)(2)(v) respectively; removing "and" at the end of redesignated (g)(2)(iv); revising redesignated paragraph (g)(2)(v); adding a new paragraph (g)(2)(vi); revising the introductory text of paragraph (h); and adding a new paragraph (i) to read as follows:

**§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.**

* * * * *

(c) * * *

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school must, unless authorization was provided in the loan application, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's, or in the case of a Federal PLUS loan, the parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made, and after the student has registered either—

* * * * *

(g) * * *

(2) * * *

(v) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan; and

(vi) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the name and address of the borrower's expected employer that will then be provided within 60 days to the guaranty agency or agencies listed in the borrower's records.

* * * * *

(h) *Treatment of excess loan proceeds.* Except as provided under paragraph (i) of this section, or in the case of a student attending a foreign school, if, before the delivery of any Stafford or SLS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

* * * * *

(i) For purposes of paragraph (h) of this section, funds obtained from any Federal College Work-Study employment that do not exceed the borrower's financial need by more than $300 may not be considered as excess loan proceeds.

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Part III

# Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Ch. I

Fair Housing: Accessibility Guidelines; Questions and Answers; Supplement to Notice

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Fair Housing and Equal Opportunity**

**24 CFR Chapter I**

**[Docket No. N-94-2011; FR-2665-N-09]**

## Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Supplement to notice of fair housing accessibility guidelines.

**SUMMARY:** On March 6, 1991, the Department published final Fair Housing Accessibility Guidelines (Guidelines) to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act) that are applicable to certain multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Since publication of the Guidelines, the Department has received many questions regarding the applicability of the technical specifications set forth in the Guidelines to certain types of new multifamily dwellings and certain types of units within covered multifamily dwellings. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to the design and construction requirements of the Fair Housing Act.

This document reproduces the questions that have been most frequently asked by members of the public, and the Department's answers to these questions. The Department believes that the issues addressed by these questions and answers may be of interest and assistance to other members of the public who must comply with the design and construction requirements of the Fair Housing Act.

**EFFECTIVE DATE:** June 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Judith Keeler, Director, Office of Program Compliance and Disability Rights. For technical questions regarding this notice, contact Office of Fair Housing and Equal Opportunity, room 5112, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410, telephone 202-708-2618 (voice), 202-708-1734 TTY; for copies of this notice contact the Fair Housing Information Clearinghouse at 1-800-795-7915 (this is a toll-free number), or 1-800-483-2209 (this is a toll-free TTY number).

**SUPPLEMENTARY INFORMATION:**

### Background

The Fair Housing Amendments Act of 1988 (Pub.L. 100-430, approved September 13, 1988) (the Fair Housing Amendments Act) amended title VIII of the Civil Rights Act of 1968 (Fair Housing Act or Act) to add prohibitions against discrimination in housing on the basis of disability and familial status. The Fair Housing Amendments Act also made it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with disabilities, and established design and construction requirements to make these dwellings readily accessible to and usable by persons with disabilities.[1] Section 100.205 of the Department's regulations at 24 CFR part 100 implements the Fair Housing Act's design and construction requirements (also referred to as accessibility requirements).

On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines) to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Act. (The Guidelines are codified at 24 CFR Ch.I, Subch.A., App. II. The preamble to the Guidelines is codified at 24 CFR Ch.I, Subch.A., App.III.) The Guidelines are organized to follow the sequence of requirements as they are presented in the Fair Housing Act and in 24 CFR 100.205. The Guidelines provide technical guidance on the following seven requirements:

Requirement 1. Accessible building entrance on an accessible route.
Requirement 2. Accessible common and public use areas.
Requirement 3. Usable doors (usable by a person in a wheelchair).
Requirement 4. Accessible route into and through the dwelling unit.
Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
Requirement 6. Reinforced walls for grab bars.
Requirement 7. Usable kitchens and bathrooms.

The design specifications presented in the Guidelines are recommended guidelines only. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. The Fair Housing Act and the Department's implementing regulation provides, for example, for use of the appropriate requirements of the ANSI A117.1 standard. However, adherence to the Guidelines does constitute a safe harbor in the Department's administrative enforcement process for compliance with the Fair Housing Act's design and construction requirements.

Since publication of the Guidelines, the Department has received many questions regarding applicability of the design specifications set forth in the Guidelines to certain types of new multifamily dwellings and to certain types of interior housing designs. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to compliance with the design and construction requirements of the Fair Housing Act. Given the wide variety in the types of multifamily dwellings and the types of dwelling units, and the continual introduction into the housing market of new building and interior designs, it was not possible for the Department to prepare accessibility guidelines that would address every housing type or housing design. Although the Guidelines cannot address every housing design, it is the Department's intention to assist the public in complying with the design and construction requirements of the Fair Housing Act through workshops and seminars, telephone assistance, written replies to written inquiries, and through the publication of documents such as this one. The Department has contracted for the preparation of a design manual that will further explain and illustrate the Fair Housing Act Accessibility Guidelines.

The questions and answers set forth in this notice address the issues most frequently raised by the public with respect to types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

The question and answer format is divided into two sections. Section 1, entitled "Dwellings Subject to the New Construction Requirements of the Fair Housing Act" addresses the issues raised in connection with the types of multifamily dwellings (including portions of such dwellings) constructed for first occupancy after March 13, 1991, that must comply with the Act's design and construction requirements. Section

[1] Although this notice uses the terms "disability" and "disabilities," the terms used in the Fair Housing Amendments Act are "handicap" and "handicaps."

2, entitled "Accessibility Guidelines," addresses the issues raised in connection with the design and construction specifications set forth in the Guidelines.

Dated: March 23, 1994.

**Roberta Achtenberg,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

Accordingly, the Department adds the "Questions and Answers about the Fair Housing Accessibility Guidelines" as Appendix IV to 24 CFR Chapter I, Subchapter A to read as follows:

**Appendix IV to Subchapter A—Questions and Answers About the Fair Housing Accessibility Guidelines**

**Introduction**

On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines). (The Guidelines are codified at 24 CFR Ch. I, Subch. A, App. II.) The Guidelines provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act) that are applicable to certain multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Since publication of the Guidelines, the Department has received many questions regarding the applicability of the technical specifications set forth in the Guidelines to certain types of new multifamily dwellings and certain types of units within covered multifamily dwellings. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to the design and construction requirements of the Fair Housing Act.

The questions and answers contained in this document address some of the issues most frequently raised by the public with respect to the types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

The issues addressed in this document are addressed only with respect to the application of the Fair Housing Act and the Guidelines to dwellings which are "covered multifamily dwellings" under the Fair Housing Act. Certain of these dwellings, as well as certain public and common use areas of such dwellings, may *also* be covered by various other laws, such as section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Architectural Barriers Act of 1968 (42 U.S.C. 4151 through 4157); and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 through 12213).

Section 504 applies to programs and activities receiving federal financial assistance. The Department's regulations for section 504 are found at 24 CFR part 8.

The Architectural Barriers Act applies to certain buildings financed in whole or in part with federal funds. The Department's regulations for the Architectural Barriers Act are found at 24 CFR parts 40 and 41.

The Americans with Disabilities Act (ADA) is a broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. The Department of Justice is the lead federal agency for implementation of the ADA and should be contacted for copies of relevant ADA regulations.

The Department has received a number of questions regarding applicability of the ADA to residential housing, particularly with respect to title III of the ADA, which addresses accessibility requirements for public accommodations. The Department has been asked, in particular, if public and common use areas of residential housing are covered by title III of the ADA. Strictly residential facilities are not considered places of public accommodation and therefore would not be subject to title III of the ADA, nor would amenities provided for the exclusive use of residents and their guests. However, common areas that function as one of the ADA's twelve categories of places of public accommodation within residential facilities are considered places of public accommodation if they are open to persons other than residents and their guests. Rental offices and sales office for residential housing, for example, are by their nature open to the public, and are places of public accommodation and must comply with the ADA requirements in addition to all applicable requirements of the Fair Housing Act.

As stated above, the remainder of this notice addresses issues most frequently raised by the public with respect to the types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

*Section 1: Dwellings Subject to the New Construction Requirements of the Fair Housing Act*

The issues addressed in this section concern the types of multifamily dwellings (or portions of such dwellings) designed and constructed for first occupancy after March 13, 1991 that must comply with the design and construction requirements of the Fair Housing Act.

1. Townhouses

(a) Q. Are townhouses in non-elevator buildings which have individual exterior entrances required to be accessible?

A. Yes, if they are single-story townhouses. If they are multistory townhouses, accessibility is not required. (*See* the discussion of townhouses in the preamble to the Guidelines under "Section 2—Definitions [Covered Multifamily Dwellings]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

(b) Q. Does the Fair Housing Act cover four one-story dwelling units that share common walls and have individual entrances?

A. Yes. The Fair Housing Act applies to all units in buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. This would include one-story homes, sometimes called "single-story townhouses," "villas," or "patio apartments," regardless of ownership, even though such homes may not be considered multifamily dwellings under various building codes.

(c) Q. What if the single-story dwelling units are separated by firewalls?

A. The Fair Housing Act would still apply. The Guidelines define covered multifamily dwellings to include buildings having four or more units within a single structure separated by firewalls.

2. Commercial Space

Q. If a building includes three residential dwelling units and one or more commercial spaces, is the building a "covered multifamily dwelling" under the Fair Housing Act?

A. No. Covered multifamily dwellings are buildings consisting of four or more dwelling units, if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. Commercial space does not meet the definition of "dwelling unit." Note,

however, that title III of the ADA applies to public accommodations and commercial facilities, therefore an independent determination should be made regarding applicability of the ADA to the commercial space in such a building. (*See* the introduction to these questions and answers, which provides some background on the ADA.)

3. Condominiums

(a) Q. Are condominiums covered by the Fair Housing Act?

A. Yes. Condominiums in covered multifamily dwellings are covered by the Fair Housing Act. The Fair Housing Act makes no distinctions based on ownership.

(b) Q. If a condominium is pre-sold as a shell and the interior is designed and constructed by the buyer, are the Guidelines applicable?

A. Yes. The Fair Housing Act applies to design and construction of covered multifamily dwellings, regardless of whether the person doing the design and construction is an architect, builder, or private individual. (*See* discussion of condominiums in the preamble to Guidelines under "Section 2—Definitions [Dwelling Units]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

4. Additions

(a) Q. If an owner adds four or more dwelling units to an existing building, are those units covered by the Fair Housing Act?

A. Yes, provided that the units constitute a new addition to the building and not substantial rehabilitation of existing units.

(b) Q. What if new public and common use spaces are also being added?

A. If new public and common use areas or buildings are also added, they are required to be accessible.

(c) Q. If the only new construction is an addition consisting of four or more dwelling units, would the existing public and common use spaces have to be made accessible?

A. No, existing public and common use areas would not have to be made accessible. The Fair Housing Act applies to *new construction* of covered multifamily dwellings. (*See* section 804(f)(3)(C)(i) of the Act.) Existing public and common use facilities are not newly constructed portions of covered multifamily dwellings. However, reasonable modifications to the existing public and common use areas to provide access would have to be allowed, and the Americans with Disabilities Act (ADA) may apply to certain public and common use areas. An independent determination should be made regarding applicability of the ADA. (*See* the introduction to these questions and answers, which provides some background on the ADA.)

5. Units Over Parking

(a) Q. Plans for a three-story building consist of a common parking area with assigned stalls on grade as the first story, and two stories of single-story dwelling units stacked over the parking. All of the stories above the parking level are to be accessed by stairways. There are no elevators planned to be in the building. Would the first story of single-story dwelling units over the parking level be required to be accessible?

A. Yes. The Guidelines adopt and amplify the definition of "ground floor" found in HUD's regulation implementing the Fair Housing Act (*see* 24 CFR 100.201) to indicate that "* * * where the first floor containing dwelling units is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor." (*See* definition of "ground floor" in the Guidelines at 24 CFR Ch. I, Subch. A, App. II, Section 2.) Where no dwelling units in a covered multifamily dwelling are located on grade, the first floor with dwelling units will be considered to be a ground floor, and must be served by a building entrance on an accessible route. However, the definition of "ground floor" does not require that there be more than one ground floor.

(b) Q. If a building design contains a mix of single-story flats on grade and single-story flats located above grade over a public parking area, do the flats over the parking area have to be accessible?

A. No. In the example in the above question, because some single-story flats are situated on grade, these flats would be the ground floor dwelling units and would be required to be accessible. The definition of ground floor in the Guidelines states, in part, that "ground floor means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors * * *." Thus, the definition includes situations where the design plan is such that more than one floor of a building may be accessed by means of an accessible route (for an example, see Question 6, which follows). There is no requirement in the Department's regulations implementing the Fair Housing Act that there be more than one ground floor.

6. More Than One Ground Floor

Q. If a two or three story building is to be constructed on a slope, such that the lowest story can be accessed on grade on one side of the building and the second story can be accessed on grade on the other side of the building, do the dwelling units on both the first and second stories have to be made accessible?

A. Yes. By defining "ground floor" to be any floor of a building with an accessible entrance on an accessible route, the Fair Housing Act regulations recognize that certain buildings, based on the site and the design plan, have more than one story which can be accessed at or near grade. In such cases, if more than one story can be designed to have an accessible entrance on an accessible route, then all such stories should be so designed. Each story becomes a ground floor and the dwelling units on that story must meet the accessibility requirements of the Act. (*See* the discussion on this issue in Question 12 of this document.)

7. Continuing Care Facilities

Q. Do the new construction requirements of the Fair Housing Act apply to continuing care facilities which incorporate housing, health care and other types of services?

A. The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a "dwelling" under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings. Factors that the Department will consider in making such an examination include, but are not limited to: (1) the length of time persons stay in the project; (2) whether policies are in effect at the project that are designed and intended to encourage or discourage occupants from forming an expectation and intent to continue to occupy space at the project; and (3) the nature of the services provided by or at the project.

8. Evidence of First Occupancy

Q. The Fair Housing Act applies to covered multifamily dwellings built for first occupancy after March 13, 1991. What is acceptable evidence of "first occupancy"?

A. The determination of first occupancy is made on a building by building basis. The Fair Housing Act

regulations provide that "covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 (and therefore exempt from the Act's accessibility requirements) if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, county or local government on or before June 15, 1990."

For buildings that did not obtain the final building permit on or before June 15, 1990, proof of the date of first occupancy consists of (1) a certificate of occupancy, and (2) a showing that at least one dwelling unit in the building actually was occupied by March 13, 1991. For example, a tenant has signed a lease and has taken possession of a unit. The tenant need not have moved into the unit, but the tenant must have taken possession so that, if desired, he or she could have moved into the building by March 13, 1991. For dwelling units that were for sale, this means that the new owner had completed settlement and taken possession of the dwelling unit by March 13, 1991. Once again, the new owner need not have moved in, but the owner must have been in possession of the unit and able to move in, if desired, on or before March 13, 1991. A certificate of occupancy alone would not be an acceptable means of establishing first occupancy, and units offered for sale, but not sold, would not meet the test for first occupancy.

9. Converted Buildings

Q. If a building was used previously for a nonresidential purpose, such as a warehouse, office building, or school, and is being converted to a multifamily dwelling, must the building meet the requirements of the Fair Housing Act?

A. No, the Fair Housing Act applies to "covered multifamily dwellings for first occupancy after" March 13, 1991, and the Fair Housing Act regulation defines "first occupancy" as "a building that has never before been used for any purpose." (*See* 24 CFR 100.201, for the definition of "first occupancy," and also 24 CFR Ch. I, Subch. A, App. I.)

*Section 2: Accessibility Guidelines*

The issues addressed in this section concern the technical specifications set forth in the Fair Housing Accessibility Guidelines.

*Requirement 1—Accessible Entrance on an Accessible Route*

10. Accessible Routes to Garages

(a) Q. Is it necessary to have an accessible path of travel from a subterranean garage to single-story covered multifamily dwellings built on top of the garage?

A. Yes. The Fair Housing Act requires that there be an accessible building entrance on an accessible route. To satisfy Requirement 1 of the Guidelines, there would have to be an accessible route leading to grade level entrances serving the single-story dwelling units from a public street or sidewalk or other pedestrian arrival point. The below grade parking garage is a public and common use facility. Therefore, there must also be an accessible route from this parking area to the covered dwelling units. This may be provided either by a properly sloped ramp leading from the below grade parking to grade level, or by means of an elevator from the parking garage to the dwelling units.

(b) Q. Does the route leading from inside a private attached garage to the dwelling unit have to be accessible?

A. No. Under Requirement 1 of the Guidelines, there must be an accessible entrance to the dwelling unit on an accessible route. However, this route and entrance need not originate inside the garage. Most units with attached garages have a separate main entry, and this would be the entrance required to be accessible. Thus, if there were one or two steps inside the garage leading into the unit, there would be no requirement to put a ramp in place of the steps. However, the door connecting the garage and dwelling unit would have to meet the requirements for usable doors.

11. Site Impracticality Tests

(a) Q. Under the individual building test, how is the second step of the test performed, which involves measuring the slope of the finished grade between the entrance and applicable arrival points?

A. The slope is measured at ground level from the entrance to the top of the pavement of all vehicular and pedestrian arrival points within 50 feet of the planned entrance, or, if there are none within 50 feet, the vehicular or pedestrian arrival point closest to the planned entrance.

(b) Q. Under the individual building test, at what point of the planned entrance is the measurement taken?

A. On a horizontal plane, the center of each individual doorway should be the point of measurement when measuring to an arrival point, whether the doorway is an entrance door to the building or an entrance door to a unit.

(c) Q. The site analysis test calls for a calculation of the percentage of the buildable areas having slopes of less than 10 percent. What is the definition of "buildable areas"?

A. The "buildable area" is any area of the lot or site where a building can be located in compliance with applicable codes and zoning regulations.

12. Second Ground Floors

(a) Q. The Department's regulation for the Fair Housing Act provides that there can be more than one ground floor in a covered multifamily dwelling (such as a three-story building built on a slope with three stories at and above grade in front and two stories at grade in back). How is the individual building test performed for additional stories, to determine if those stories must also be treated as "ground floors"?

A. For purposes of determining whether a non-elevator building has more than one ground floor, the point of measurement for additional ground floors, after the first ground floor has been established, is at the center of the entrance (building entrance for buildings with one or more common entrance and each dwelling unit entrance for buildings with separate ground floor unit entrances) at floor level for that story.

(b) Q. What happens if a builder deliberately manipulates the grade so that a second story, which also might have been treated as a ground floor, requires steps?

A. Deliberate manipulation of the height of the finished floor level to avoid the requirements of the Fair Housing Act would serve as a basis for the Department to determine that there is reasonable cause to believe that a discriminatory housing practice has occurred.

*Requirement 2—Public and Common Use Areas*

13. No Covered Dwellings

Q. Are the public and common use areas of a newly constructed development that consists entirely of buildings having four or more multistory townhouses, with no elevators, required to be accessible?

A. No. The Fair Housing Act applies only to new construction of covered multifamily dwellings. Multistory townhouses, provided that they meet the definition of "multistory" in the Guidelines, are not covered multifamily dwellings if the building does not have an elevator. (*See* discussion of townhouses in the preamble to the Guidelines under "Section 2—Definitions [Covered Multifamily Dwellings]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.) If there are no covered multifamily

dwellings on a site, then the public and common use areas of the site are not required to be accessible. However, the Americans with Disabilities Act (ADA) may apply to certain public and common use areas. Again, an independent determination should be made regarding applicability of the ADA. (*See* the introduction to these questions and answers, which provides some background on the ADA.)

14. Parking Spaces and Garages

(a) Q. How many resident parking spaces must be made accessible at the time of construction?

A. The Guidelines provide that a minimum of two percent of the parking spaces serving covered dwelling units be made accessible and located on an accessible route to wheelchair users. Also, if a resident requests an accessible space, additional accessible parking spaces would be necessary if the two percent are already reserved.

(b) Q. If both open and covered parking spaces are provided, how many of each type must be accessible?

A. The Guidelines require that accessible parking be provided for residents with disabilities on the same terms and with the full range of choices, *e.g.*, surface parking or garage, that are provided for other residents of the project. Thus, if a project provides different types of parking such as surface parking, garage, or covered spaces, some of each must be made accessible. While the total parking spaces required to be accessible is only two percent, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

(c) Q. If a project having covered multifamily dwellings provides parking garages where there are several individual garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, are there any requirements for the inside dimensions of these individual parking garages?

A. Yes. These garages would be public and common use space, even though the individual garages may be assigned to a particular dwelling unit. Therefore, at least two percent of the garages should be at least 14′ 2″ wide and the vehicular door should be at least 10′–0″ wide.

(d) Q. If a covered multifamily dwelling has a below grade common use parking garage, is there a requirement for a vertical clearance to allow vans to park?

A. This issue was addressed in the preamble to the Guidelines, but continues to be a frequently asked question. (*See* the preamble to the Guidelines under the discussion of "Section 5—Guidelines for Requirement 2" at 56 FR 9486, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.) In response to comments from the public that the Guidelines for parking specify minimum vertical clearance for garage parking, the Department responded:

> No national accessibility standards, including UFAS, require particular vertical clearances in parking garages. The Department did not consider it appropriate to exceed commonly accepted standards by including a minimum vertical clearance in the Fair Housing Accessibility Guidelines, in view of the minimal accessibility requirements of the Fair Housing Act.

Since the Guidelines refer to ANSI A117.1 1986 for the standards to follow for public and common use areas, and since the ANSI does not include a vertical clearance for garage parking, the Guidelines likewise do not. (Note: UFAS is the Uniform Federal Accessibility Standard.)

15. Public Telephones

Q. If a covered multifamily dwelling has public telephones in the lobby, what are the requirements for accessibility for these telephones?

A. The requirements governing public telephones are found in Item #14, "Common use spaces and facilities," in the chart under Requirement 2 of the Guidelines. While the chart does not address the quantity of accessible public telephones, at a minimum, at least one accessible telephone per bank of telephones would be required. The specifications at ANSI 4.29 would apply.

*Requirement 3—Usable Doors*

16. Required Width

Q. Will a standard hung 32-inch door provide sufficient clear width to meet the requirements of the Fair Housing Act?

A. No, a 32-inch door would not provide a sufficient clear opening to meet the requirement for usable doors. A notation in the Guidelines for Requirement 3 indicates that a 34-inch door, hung in the standard manner, provides an acceptable nominal 32-inch clear opening.

17. Maneuvering Clearances and Hardware

Q. Is it correct that only the exterior side of the main entry door of covered multifamily dwellings must meet the ANSI requirements?

A. Yes. The exterior side of the main entry door is part of the public and common use areas and therefore must meet ANSI A117.1 1986 specifications for doors. These specifications include necessary maneuvering clearances and accessible door hardware. The interior of the main entry door is part of the dwelling unit and only needs to meet the requirements for usable doors within the dwelling intended for user passage, i.e., at least 32 inches nominal clear width, with no requirements for maneuvering clearances and hardware. (*See* 56 FR 9487–9488, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

18. Doors to Inaccessible Areas

Q. Is it necessary to provide usable doors when the door leads to an area of the dwelling that is not accessible, such as the door leading down to an unfinished basement, or the door connecting a single-story dwelling with an attached garage? (In the latter case, there is a separate entrance door to the unit which is accessible.)

A. Yes. Within the dwelling unit, doors intended for user passage through the unit must meet the requirements for usable doors. Such doors would have to provide at least 32 inches nominal clear width when the door is open 90 degrees, measured between the face of the door and the stop. This will ensure that, if a wheelchair user occupying the dwelling unit chooses to modify the unit to provide accessibility to these areas, such as installing a ramp from the dwelling unit into the garage, the door will be sufficiently wide to allow passage. It also will allow passage for people using walkers or crutches.

*Requirement 4—Accessible Route Into and Through the Unit*

19. Sliding Door

Q. If a sliding door track has a threshold of ¾″, does this trigger requirements for ramps?

A. No. The Guidelines at Requirement 4 provide that thresholds at doors, including sliding door tracks, may be no higher than ¾″ and must be beveled with a slope no greater than 1:2.

20. Private Attached Garages

(a) Q. If a covered multifamily dwelling has an individual, private garage which is attached to and serves only that dwelling, does the garage have to be accessible in terms of width and length?

A. Garages attached to and which serve only one covered multifamily dwelling are part of that dwelling unit, and are not covered by Requirement 2 of the Guidelines, which addresses accessible and usable public and common use space. Because such individual garages attached to and serving only one covered multifamily

dwelling typically are not finished living space, the garage is not required to be accessible in terms of width or length. The answer to this question should be distinguished from the answer to Question 14(c). Question 14(c) addresses parking garages where there are several garages or stalls located together, either in a separate, detached building, or in a central area of the building, such as at one end. These types of garages are not attached to, and do not serve, only one unit and are therefore considered public and common use garages.

21. Split-Level Entry

Q. Is a dwelling unit that has a split entry foyer, with the foyer and living room on an accessible route and the remainder of the unit down two steps, required to be accessible if it is a ground floor unit in a covered multifamily dwelling?

A. Yes. Under Requirement 4, there must be an accessible route into and through the dwelling unit. This would preclude a split level foyer, unless a properly sloped ramp can be provided.

*Requirement 5—Environmental Controls*

22. Range Hood Fans

Q. Must the switches on range hood kitchen ventilation fans be in accessible locations?

A. No. Kitchen ventilation fans located on a range hood are considered to be part of the appliance. The Fair Housing Act has no requirements for appliances in the interiors of dwelling units, or the switches that operate them. (See "Guidelines for Requirement 5" and "Controls for Ranges and Cooktops" at 56 FR 9490 and 9492, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

*Requirement 6—Reinforced Walls for Grab Bars*

23. Type of Reinforcement

Q. What type of reinforcement should be used to reinforce bathroom walls for the later installation of grab bars?

A. The Guidelines do not prescribe the type of material to use or method of providing reinforcement for bathroom walls. The Guidelines recognize that grab bar reinforcing may be accomplished in a variety of ways, such as by providing plywood panels in the areas illustrated in the Guidelines under Requirement 6, or by installing vertical reinforcement in the form of double studs at the points noted on the figures in the Guidelines. The builder/owners should maintain records that reflect the placement of the reinforcing material, for later reference by a resident who wishes to install a grab bar.

24. Type of Grab Bar

Q. What types of grab bars should the reinforcement be designed to accommodate and what types may be used if the builder elects to install grab bars in some units at the time of construction?

A. The Guidelines do not prescribe the type of product for grab bars, or the structural strength for grab bars. The Guidelines only state that the necessary reinforcement must be placed "so as to permit later installation of *appropriate* grab bars." (Emphasis added.) In determining what is an appropriate grab bar, builders are encouraged to look to the 1986 ANSI A117.1 standard, the standard cited in the Fair Housing Act. Builders also may follow State or local standards in planning for or selecting appropriate grab bars.

*Requirement 7—Usable Kitchens and Bathrooms*

25. Counters and Vanities

Q. It appears from Figure 2(c) of the Guidelines (under Requirement 5) that there is a 34 inch height requirement for kitchen counters and vanities. Is this true?

A. No. Requirement 7 addresses the requirement for usable kitchens and bathrooms so that a person in a wheelchair can maneuver about the space. The legislative history of the Fair Housing Act makes it clear that the Congress intended that the Act affect ability to maneuver within the space of the kitchen and bathroom, but not to require fixtures, cabinetry or plumbing of adjustable design. Figure 2(c) of the Guidelines is illustrating the maximum side reach range over an obstruction. Because the picture was taken directly from the ANSI A117.1 1986 standard, the diagram also shows the height of the obstruction, which, in this picture, is a countertop. This 34 inch height, however, should not be regarded as a requirement.

26. Showers

Q. Is a parallel approach required at the shower, as shown in Figure 7(d) of the Guidelines?

A. Yes. For a 36" x 36" shower, as shown in Figure 7(d), a person in a wheelchair would typically add a wall hung seat. Thus the parallel approach as shown in Figure 7(d) is essential in order to be able to transfer from the wheelchair to the shower seat.

27. Tub Controls

Q. Do the Guidelines set any requirements for the type or location of bathtub controls?

A. No, except where the specifications in Requirement 7(2)(b) are used. In that case, while the type of control is not specified, the control must be located as shown in Figure 8 of the Guidelines.

28. Paragraph (b) Bathrooms

Q. If an architect or builder chooses to follow the bathroom specifications in Requirement 7, Guideline 2, paragraph (b), where at least one bathroom is designed to comply with the provisions of paragraph (b), are the other bathrooms in the dwelling unit required to have reinforced walls for grab bars?

A. Yes. Requirement 6 of the Guidelines requires reinforced walls in bathrooms for later installation of grab bars. Even though Requirement 6 was not repeated under Requirement 7—Guideline 2, it is a separate requirement which must be met in all bathrooms. The same would be true for other Requirements in the Guidelines, such as Requirement 5, which applies to usable light switches, electrical outlets, thermostats and other environmental controls; Requirement 4 for accessible route; and Requirement 3 for usable doors.

29. Bathroom Clear Floor Space

Q. Is it acceptable to design a bathroom with an in-swinging 2'10" door which can be retrofitted to swing out in order to provide the necessary clear floor space in the bathroom?

A. No. The requirements in the Guidelines must be included at the time of construction. Thus, for a bathroom, there must be sufficient maneuvering space and clear floor space so that a person using a wheelchair or other mobility aid can enter and close the door, use the fixtures and exit.

30. Lavatories

Q. Would it be acceptable to use removable base cabinets beneath a wall-hung lavatory where a parallel approach is not possible?

A. Yes. The space under and around the cabinet should be finished prior to installation. For example, the tile or other floor finish must extend under the removable base cabinet.

31. Wing Walls

Q. Can a water closet (toilet) be located in an alcove with a wing wall?

A. Yes, as long as the necessary clear floor space shown in Figure 7(a) is provided. This would mean that the wing wall could not extend beyond the front edge of a lavatory located on the other side of the wall from the water closet.

32. Penalties

Q. What types of penalties or monetary damages will be assessed if covered multifamily dwellings are found not to be in compliance with the Fair Housing Act?

A. Under the Fair Housing Act, if an administrative law judge finds that a respondent has engaged in or is about to engage in a discriminatory housing practice, the administrative law judge will order appropriate relief. Such relief may include actual and compensatory damages, injunctive or other equitable relief, attorney's fees and costs, and may also include civil penalties ranging from $10,000 for the first offense to $50,000 for repeated offenses. In addition, in the case of buildings which have been completed, structural changes could be ordered, and an escrow fund might be required to finance future changes.

Further, a Federal district court judge can order similar relief plus punitive damages as well as civil penalties for up to $100,000 in an action brought by a private individual or by the U.S. Department of Justice.

[FR Doc. 94-15501 Filed 6-27-94; 8:45 am]
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federal register

Tuesday
June 28, 1994

Part IV

# Department of Energy

**Environmental Management Site Specific Advisory Board Meeting, Savannah River Site; Notice**

## DEPARTMENT OF ENERGY

### Environmental Management Site Specific Advisory Board, Savannah River Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

**DATES:** Tuesday, June 28, 1994: 8:30 a.m.–4:00 p.m.

**ADDRESSES:** June 28, 1994 meeting: Savannah River Site Building 703–41A, Road SR 1, Aiken, S.C. 29802

**FOR FURTHER INFORMATION CONTACT:** Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7633.

**SUPPLEMENTARY INFORMATION:** Purpose of the Committee: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

**Tentative Agenda**

*Tuesday, June 28, 1994*

8:00 a.m.
Coffee
8:30 a.m.
Agency updates (5)
Andrew Rea resolution (30)
9:10 a.m.
Environmental remediation path forward—P.K. Smith
9:45 a.m.
Break
10:00 a.m.
Solid waste program overview—Virgil Sauls
Solid waste streams—Brent Daughtery
12:00 p.m.
Lunch
1:00 p.m.
Solid waste disposal and ER case study—Clay Jones
2:00 p.m.
Break
2:15 p.m.
Education path forward—P.K. Smith
2:30 p.m.
Budget subcommittee report—Tom Greene
3:00 p.m.
Other subcommittee reports
3:30 p.m.
Public comments (5-minute rule)
4:00 p.m.
Adjourn

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)-725–8074.

Issued at Washington, DC, on June 24, 1994.

**Marcia L. Morris,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 94–15794 Filed 6–24–94; 1:39 pm]

BILLING CODE 6450–01–P

federal register

Tuesday
June 28, 1994

Part V

# Department of Housing and Urban Development

## Office of the Assistant Secretary for Public and Indian Housing

## Funding Availability for Technical Assistance to Public Housing Authorities and Public Housing Police Departments; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3799; FR–3711–N–01]

### Notice of Funding Availability for Technical Assistance to Public Housing Authorities and Public Housing Police Departments

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of funding availability (NOFA).

**SUMMARY:** This NOFA announces funding of up to $1.5 million for qualified vendors to: (1) Develop a program to improve public housing police departments in 11 designated cities, (2) facilitate law enforcement service agreements between housing authorities and local government, and (3) provide the technical assistance to implement the program and agreements developed under (1) and (2).

**DATES:** Applications must be received at HUD Headquarters at the address below on or before 3 pm, Eastern Daylight Time, August 2, 1994. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. Applications received after the deadline will not be considered.

**ADDRESSES:** An original and four copies of the application must be sent to the Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street SW., Washington, DC 20410.

**FOR FURTHER INFORMATION, CONTACT:** Malcolm (Mike) Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Statement**

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number, when assigned, will be published in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden for all of the technical assistance NOFAs under this program is provided below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

| No. of NOFAs affected | No. of respondents per NOFA | No. of responses per NOFA | Total responses | Hours per response | Total No. hrs. |
|---|---|---|---|---|---|
| Per year: 6 | 10 | 1 | 60 | 40 | 2,400 |
| Total for three years: 18 | 10 | 1 | 180 | 40 | 7,200 |

**I. Purpose and Substantive Description**

**(a) Purpose**

The overall objectives of this grant are to: (1) Develop a program to improve public housing police departments in 11 designated cities, (2) facilitate law enforcement service agreements between housing authorities and local government, and (3) provide the technical assistance to implement the program and agreements developed under (1) and (2).

**(b) Authority**

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

**(c) Award Amounts**

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993 (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program of which $5 million is to be used for funding technical assistance and training. The funding available under this NOFA is a part of this $5 million.

A cost-reimbursable grant for $1.5 million for a 1-year base period, with 4 option years, will be awarded under this NOFA. The applicant must submit a five year strategy which includes the first year budget of $1.5 million. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

**(d) Eligibility**

(1) Eligible applicants. Applicants must demonstrate executive managerial law enforcement experience in the following areas or they will not be considered for funding:

(i) Conducting law enforcement assessments in cities of a population of 500,000 or more;

(ii) Conducting law enforcement assessments of public housing police departments;

(iii) Design, development and delivery of training and technical assistance programs for law enforcement agencies;

(iv) Development and implementation of law enforcement policies, procedures and manuals, personnel management systems, fiscal tracking systems,

dispatch systems, records management, patrol strategy and crime prevention programs;

(v) Managing the accreditation process of local law enforcement agencies;

(vi) Developing technical and physical security systems in public housing or the private sector;

(vii) Design and implementation of community policing programs; and

(viii) Working with Federal and local law enforcement agencies.

(2) *Activities/tasks to be funded.* The grantees selected for funding under this NOFA shall perform the following tasks:

(i) *Task 1—Public Housing Police Department Upgrades.* The following subtasks are to be performed in 11 designated cities that have both municipal police and housing authority police departments serving public housing residents. In addition, the grantee will be required to hold a briefing, for up to three representatives from each designated city, of the tasks to be accomplished under this grant. The briefing is to be conducted in the Washington, DC area immediately after completion and approval of the management and work plan under section (j)(4) of this NOFA. The Department conducted a study to identify housing authority (HA) police departments that met the following criteria: they were moving towards national or State accreditation; their officers were State or local commissioned police officers and/or had completed police academy training; and they had operations and salaries that were funded with HUD operating subsidies or other HUD funds. Based upon this study the Department determined that the HAs listed below had their own HA police departments which met these criteria. The 11 housing authorities (HA) and cities for Task 1 are:

Baltimore HA and Community Development, Baltimore, MD
Boston HA, Boston, MA
Buffalo HA, Buffalo, NY
Chicago HA, Chicago, IL
Cuyahoga Metropolitan HA, Cleveland, OH
HA of the City of Los Angeles, Los Angeles, CA
HA of the City of Oakland, Oakland, CA
HA of the City of Pittsburgh, Pittsburgh, PA
Newark HA, Newark, NJ
Philadelphia HA, Philadelphia, PA
HA of the City of Waterbury, Waterbury, CT

The New York City Housing Authority has a housing authority police department. This department has already been accredited as of March 27, 1994 and *therefore will not be* included in this NOFA.

(A) *Task 1 Subtask 1—Law Enforcement Services Agreements.* The grantee shall facilitate law enforcement service agreements, for additional law enforcement services beyond the HA cooperation agreement, between housing authorities and local government. The grantee shall work with public housing officials and local governments in the 11 cities with public housing police departments to negotiate and implement additional law enforcement service agreements between local police and public housing officials. The anticipated agreements would relate to the provision of police services to public housing residents by municipal police and public housing police, access to emergency services, baseline services provided to public housing residents, reporting of crimes city-wide and in public housing, and other items that may be of mutual interest to the city and/or housing authority.

(B) *Task 1 Subtask 2—Policy and Procedures Manual.* The grantee shall work with public housing police departments in 11 cities to develop and implement a state of the art police policy and procedures manual. Where a manual exists, the manual should be edited to the point that relevant policies, procedures and general orders are clearly defined for public housing services.

(C) *Task 1 Subtask 3—Personnel Management System.* The grantee shall work with public housing police departments in 11 cities to develop and implement a modern police personnel management system to include recruitment, selection, initial and continuing training, evaluation, compensation, job descriptions, and promotional systems. The grantee shall also, through focus groups and/or needs assessment, identify topics for a core curriculum for continuing HA police officer training in areas specific to HAs, such as vertical patrols, investigative techniques, and sensitivity training.

(D) *Task 1 Subtask 4—Fiscal Tracking System.* The grantee shall work with public housing authorities and housing police departments in 11 cities to develop a consistent fiscal tracking system that incorporates modern financial management systems into the way the authorities and police justify and track expenditures. Fiscal planning should be incorporated into the fiscal system so that a procedure exists to reflect anticipated costs five years into the future. In addition, the grantee shall work with housing authority officials in 11 cities to identify the source of funding for police and security upgrades and establish timelines for completion of upgrades.

(E) *Task 1 Subtask 5—Emergency Dispatch System.* The grantee shall work with public housing police departments and municipal police departments in 11 cities to develop a state of the art emergency dispatch system for public housing residents that reflects the most expeditious way to provide residents in each of the 11 cities with emergency police response. This task is to include developing recommendations for assuring communications between public housing police departments and municipal police departments, 911 services, non-emergency calls, anticipated expenditures by authority for technical upgrades, and training requirements for officers and dispatchers.

(F) *Task 1 Subtask 6—Records Management.* The grantee shall work with public housing police departments in 11 cities to develop a records management system that represents state of the art practices in collecting, coding, filing, analyzing and accessing police information. This task is to include an assessment of computer hardware and software that may be appropriate for use in each city, interface between records and dispatch in the housing police, interface between municipal police departments and housing authority police departments, compliance with Uniform Crime Reporting (UCR) and/or the National Incident Based Reporting System (NIBRS) procedures, forms for collecting data, and staffing requirements for the records function.

(G) *Task 1 Subtask 7—Patrol Strategies.* The grantee shall work with public housing police departments in 11 cities to develop and implement modern police patrol strategies for public housing police departments to include patrol procedures, vertical patrols, development of staffing criteria, patrol beat development, response to calls or crimes, proactive strategies, bicycle patrols, investigation of crimes by patrol personnel, follow-up procedures with victims, stake-out strategies, and use of crime analysis.

(H) *Task 1 Subtask 8—Crime Prevention Programs.* The grantee shall work with public housing police departments in 11 cities to develop and implement crime prevention programs. This task is to include programs to counter crime and fear of crime, programs to enlist and maintain public cooperation, police officer programs,

use of residents and training of residents.

(I) *Task 1 Subtask 9—Technical and Physical Security Programs.* The grantee shall work with public housing police departments in 11 cities to develop and implement technical security programs in public housing buildings to include the use of closed circuit television cameras, monitors, sensors, fencing, locks, access control, lighting, parking and other state of the art programs. This task is to include recommendations on staffing buildings with guards and the anticipated costs by building or development.

(J) *Task 1 Subtask 10—Accreditation for Law Enforcement Agencies.* The grantee shall work with 11 public housing police departments to become accredited police departments, or to elevate their professional capacity to the point that the housing authority police department meets all the standards promulgated by the Commission on Accreditation for Law Enforcement Agencies (CALEA) relative to the work provided by the respective public housing police departments.

(K) *Task 1 Subtask 11—Community Policing Programs.* The grantee shall work with public housing police departments in 11 cities to design, develop and implement community policing programs that are tailored to public housing. This Task is to include the development and implementation of training programs for public housing police department officers, municipal police department officers, housing authority officials and residents in the 11 cities.

(ii) *Task 2—Additional Law Enforcement Service Agreements Between Housing Authorities and Local Police Departments for Police Services.* The grantee shall work with public housing departments and local governments in a minimum of 15 cities, *to be identified after the grant award,* without public housing police departments to negotiate and implement additional law enforcement service agreements, beyond the HA cooperation agreement, between local police departments and public housing officials. The anticipated agreements would relate to the provision of police services to public housing residents by municipal police, access to emergency services, baseline services provided to public housing residents, reporting of crimes city-wide and in public housing, and other items that may be of mutual interest to the city and/or housing authority. In this task, the cities would be selected through joint discussion between HUD and the vendor.

(iii) *Task 3—Technical Assistance.* The grantee shall work with the designated housing authorities and local governments to provide technical assistance to each of the housing authorities to facilitate effective relationships and improve law enforcement service delivery. The grantee will provide technical assistance to housing authorities to assist in implementing the recommendations identified in the course of implementing Tasks 1 and 2.

(iv) *Task 4—Required Reports.* The grantee shall provide HUD a written report on the proposed implementation plan for each public housing police department, and the 15 HAs without police departments where the grantee is to provide technical assistance between the HA and local government, prior to implementing any activities. It is understood that the recommendations for one public housing police department may apply in another public housing police department; however, each housing police department is to have a separate report with recommendations, costs, suggested sources of funding, staffing implications, and timelines.

(e) Application submission requirements.

(1) Applicants must submit a completed application for Federal Assistance (Standard Form 424). The SF–424 is the face sheet for the application. The applicant will provide budget information on Standard Form 424A, including a program narrative, a detailed budget narrative with supporting cost analysis. The applicant will identify their legal and accounting services that will be used.

(2) Application format requirements:

(i) Applicant's cover letter.

(ii) TAB 1—Standard Form 424, Application for Federal Assistance.

(iii) TAB 2—Standard Form 424A, Budget Information with attached program narrative, a detailed budget with budget narrative with supporting cost analysis and legal and accounting services. The narrative must include the applicant's financial capability, i.e., the fiscal controls and accounting procedures which assure that Federal funds will be accounted for properly. The applicant must demonstrate that it has the management and financial capability to effectively implement a project of this size and scope. The applicant must submit a five year strategy which includes the first year budget of $1.5 million with 4 option years of comparable funding amounts.

(iv) TAB 3—Program implementation plan (Tasks 1–4). Applicants must prepare a plan that describes clearly and in detail the strategy and structure for the implementation of all tasks within this NOFA:

(A) The first year of project implementation, identifying:

(*1*) Each task that will be initiated in the first year;

(*2*) A plan to implement task 1, 3 and 4 throughout all of the below listed 11 designated housing authorities over the course of the five year strategy—Baltimore HA and Community Development, Baltimore, MD; Boston HA, Boston, MA; Chicago HA, Chicago, IL; Cuyahoga Metropolitan HA, Cleveland, OH; HA of the City of Los Angeles, Los Angeles, CA; Newark HA, Newark, NJ; HA of the City of Oakland, Oakland, CA; Philadelphia HA, Philadelphia, PA; Buffalo HA, Buffalo, NY; HA of the City of Pittsburgh, Pittsburgh, PA; and the HA of the City of Waterbury, Waterbury, CT. The plan must indicate where the tasks initiated in the first year will be carried out; and

(*3*) A plan to implement Tasks 2, 3 and 4 for a minimum of 15 cities throughout all of the cities in the first year.

(*4*) There must be a time-task plan which clearly identifies the major milestones and products, organizational responsibility, and schedule for the completion of activities and products.

(v) TAB 3A—First year timetable. A timetable for the completion of each task initiated in the first year, which may extend beyond the first year.

(vi) TAB 3B—Five year timetable. A timetable for initiation and completion of each remaining task over the five year period.

(vii) TAB 4—Applicant's corporate qualifications.

(A) Each applicant must fully describe its organizational structure, staff size, and prior experience in community policing and security issues in public housing and/or other programs designed to provide security to residents of public housing. Applicants must demonstrate that their organizational structure, staff size, and prior experience is sufficient to implement effectively a project of this size and scope. In addition, the applicant must demonstrate experience in conducting assessments of security/law enforcement in public housing; executive experience in managing and implementing accreditation of law enforcement agencies; and experience in technical physical security in both public housing and the private sector.

(B) The plan must include an annotated organizational chart depicting the roles and responsibilities of key organizational and functional components and a list of key personnel responsible for managing and

implementing the major elements of the program.

(viii) TAB 5—Qualifications of the Program Staff. Applicant must fully describe the capabilities and work experience of all key staff who will be working on this project. Applicants must include a staffing plan to fulfill the requirements of the required tasks, including staff titles and the staff's related educational background, experience, and skills; and the time each will be required to contribute to the project.

(ix) TAB 6—Representations, certifications, and other statements of the vendor.

(A) Certification Regarding Federal Employment.

(B) Certification of Procurement Integrity.

(C) Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(D) SF–LLL Disclosure of Lobbying Activities.

(E) Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters.

(F) Certification Regarding Drug-Free Workplace Requirements.

(G) Prior to award execution, a successful applicant must submit a certification that it will comply with:

(*1*) Section 3 of the Housing and Community Development Act of 1968, Employment Opportunities for Lower Income Persons in Connection with Assisted Projects (12 U.S.C. 1701u), and with implementing regulations at 24 CFR part 135. Section 3 requires, that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area within the unit of local government or metropolitan area (or nonmetropolitan county) and for work in connection with the project to be awarded to eligible businesses located in or owned in substantial part by persons residing in the area;

(*2*) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

(*3*) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with disabilities individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(x) Applicants wishing to make a personal presentation before the selection panel in support of their written application may schedule a presentation by contacting Malcolm E. Main on (202) 708–1197. All presentations must be scheduled by the application due date.

(f) Selective Criteria/Factors for Award. The Department will award the grant to the applicant(s) that best meets all of the factors below. All applications will be evaluated in accordance with the following factors (their weights are indicated in parentheses). Applicants shall provide a statement within their proposals that addresses each of the factors listed below. Applications will be reviewed and rated according to the extent to which they meet the following factors, which total 100 points:

(1) *Technical Soundness and Understanding of the Application (25 Points Maximum).*

(i) *Technical Soundness of the Application (12 Points Maximum).* The technical quality, clarity, creativity, thoroughness, specificity, and feasibility of the application and methodology should be reflected as the application is assessed on the basis of:

(A) The level of detail in which the application describes how it will implement each activity required in the project Tasks 1–4;

(B) The extent to which the application provides a technically sound and cost effective means for designing and implementing changes in public housing police departments.

(ii) *Basic Understanding of Security Issues in Public Housing as Well as Programs Designed to Provide Security to Residents of Public Housing (13 Points Maximum).* The application will be assessed based on the extent to which it demonstrates a clear understanding of the security issues in public housing as well as programs designed to provide security to residents of public housing, particularly as the knowledge relates to all Tasks.

(2) *Organizational Management and Capabilities (25 Points Maximum).* Grantees must demonstrate their ability to manage, organize and complete on schedule all of the tasks and responsibilities associated with this project.

(i) *Project Director (13 Points Maximum).*

(A) The extent to which the proposed Project Director has:

(*1*) Executive experience in managing projects of a similar type and scope, including proven ability to manage the performance of complex multi-site projects within the time and resource limits;

(*2*) Executive experience in managing projects involving law enforcement in cities with populations of 500,000 or more;

(*3*) A clear understanding of the methodology and techniques necessary to perform the tasks of this grant;

(*4*) Executive experience in designing and implementing, for police departments of various sizes, law enforcement systems and community policing policies and procedures that include the following:

(*A*) Organization and management.

(*B*) Personnel management.

(*C*) Patrol operations.

(*D*) Criminal investigations.

(*E*) Dispatch, records, and property.

(*F*) Management systems.

(*G*) Crime analysis system.

(*H*) Crime prevention.

(*I*) Police department accreditation.

(*J*) Community Policing.

(ii) Project Staff (12 Points Maximum).

(A) The extent to which technical and management staff members proposed for the project have:

(*1*) Demonstrated extensive experience in police program development, research, management, curriculum design, training development, delivery and on-site technical assistance delivery which involved community policing; and

(*2*) Relevant technical skills and prior experience of proposed individuals that display ability to handle complex issues relating to public housing security and implementing revisions to organizations.

(B) The extent to which the proposed staff has:

(*1*) Implemented community policing, law enforcement policy, practices and procedures.

(*2*) Expertise on a management and administrative level—with Federal and/or local law enforcement, technical security design experience, and law enforcement training.

(3) Quality of Management and Work Plan (30 Points Maximum).

(i) Soundness and completeness of the overall plan for the allocation of resources and schedule to accomplish the tasks of work within the contract time frame, including: feasibility, clarity and completeness of work assignment plan and schedule of tasks; delineation of task responsibilities and accountability and communication among project staff and between grantee and HUD; reasonableness and completeness of procedures for supervising and coordinating task performance of project staff; and, adequacy of controls over scheduling and expenditures. (15 points maximum)

(ii) Appropriateness of the proposed level of effort to be provided by the

Project Director, key professional staff, supporting staff and principal authors of the application. (15 points maximum)

(4) Corporate and Management Expertise (20 Points Maximum).

(i) Ability of the applicant to conduct high quality work within the contract time frame and budget.

(ii) Ability of the applicant to provide stability, continuity and uniformity of both staff and management.

(iii) Successful experience in managing and implementing HUD or other federal agency contracts.

(g) Review Process. Applications submitted in response to this competitive announcement will be reviewed by a panel of HUD representatives, which will make recommendations to the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development based upon the applicant's score. The panel will assign numerical values based on the weighted selection factors. In the case of a tie, preference will be given to the highest numerical score for the *Program Implementation Plan (TAB 3 of the application)*. The final award decision will be made by the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. Letters will be sent to all applicants notifying them that their proposal has been selected or the reason(s) it was not selected. HUD will then negotiate specific terms of the award with the selected applicant.

(h) Administrative requirements.

(1) Award Period. A cost-reimbursable grant for $[illegible]5 million for a 1-year base period, with 4 option years. The applicant must submit a five year strategy which includes the first year budget of $1.5 million. Each additional fiscal year award will be for comparable amounts if funds are appropriated.

(2) Grant Agreement. After the application has been approved, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism/schedule, report requirements, and special conditions.

(3) Award Orientation. Within the *first week* after the effective date of the grant, the Project Director and all key personnel shall attend a meeting at HUD Headquarters in Washington, DC, for the purpose of establishing a common understanding with respect to the purposes of the grant, the scope of work necessary to achieve the purposes, the time frame, methodology, and deliverables.

(4) Management and Work Plan. The grantee shall develop a draft management and work plan that addresses all of the task requirements. This draft plan shall be submitted to HUD for review and comment by the end of the *second week* of the grant, setting forth the timing of all stages of the project outlined in the tasks below, describing the techniques, materials and experiences of staff for this project. The plan shall include a detailed allocation of grant resources and a schedule for the accomplishment of the grant work. HUD shall submit its comments and suggestions to the grantee within one week from receipt of the draft plan. A Final Management and Work Plan incorporating HUD's comments and suggestions shall be submitted by the end of the third week of the grant.

**II. Other Matters**

*Environmental Impact.* A grant under this program is categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR part 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

*Federalism Impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this notice do not have "federalism implications" within the meaning of the Order. The notice implements a program that encourages HAs to develop a plan for addressing the problem of drug-related crime, and makes available grants to HAs to help them carry out their plans. As such, the program would help HAs combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. In addition, further review under the Order is unnecessary, since the notice generally tracks the statute and involves little implementing discretion.

*Family Impact.* The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this grant have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. As such, this grant is intended to improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

**Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures**

*Documentation and public access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

*Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

**Section 103 HUD Reform Act**

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well.

**Section 112 HUD Reform Act**

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

**Prohibition Against Lobbying Activities**

The use of funds awarded under this grant is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

**Authority:** Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 20, 1994.

**Michael B. Janis,**

*General, Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 94–15556 Filed 6–27–94; 8:45 am]

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Tuesday
June 28, 1994

Part VI

# Department of Housing and Urban Development

## Office of the Assistant Secretary for Community Planning and Development

## NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3788; FR–3684–N–01]

### NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of funding availability.

**SUMMARY:** This notice announces the availability of $1,469,000 in funds for emergency shelter grants (ESG) to be allocated to Indian tribes and Alaskan Native villages by competition. As a result of the enactment of the HUD FY 1994 appropriation, $115,000,000 is available for the Emergency Shelter Grants (ESG) Program, including the formula program and this set-aside. The amount available under this NOFA includes the FY 1994 set-aside and $319,000 of unused funds from FY 1993. The proposed rule on Emergency Shelter Grants Program; Set-Aside Allocation for Indian Tribes and Alaskan Native Villages, published in the **Federal Register** on April 5, 1993, describes the method for allocating these funds. These grants will be governed by all provisions applicable to the ESG program, including the provisions in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) that became effective upon the enactment of the law.

Within the context of moving toward a "continuum of care" system designed to combat homelessness, eligible activities include the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, payment of certain operating and essential services expenses, and homeless prevention activities.

This notice contains:

(1) Information concerning eligible applicants;

(2) Information on the funding available within each HUD Office of Native American Programs area;

(3) Information on application requirements and procedures; and

(4) A description of applicable statutory changes to the ESG program.

**DATES:** Applications for assistance will be available beginning June 28, 1994 and must be received by the appropriate HUD Office of Native American Programs by no later than 4:00 p.m. local time (i.e., the time in the office where the application is submitted) on September 12, 1994. At the time of submission, one copy of the completed application must also be sent to HUD Headquarters at the address stated below. A determination that an application was received on time will be made solely on receipt of the original application at the Office of Native American Programs.

This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

**ADDRESSES:** An original of the application must be sent to the HUD Office of Native American Programs serving the area in which the applicant's project is located. A list of addresses and telephone numbers for the Area Offices of Native American Programs appears as an Appendix to this NOFA. At the same time, a copy of the completed application must also be sent to the following address: Office of Special Needs Assistance Programs, Attention: Emergency Shelter Grants Program Set-Aside, U.S. Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410–7000.

**FOR FURTHER INFORMATION CONTACT:** Barbara H. Richards, Acting Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–4300, or (202) 708–2565 (voice/TDD). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2506–0135.

#### *I. Purpose and Substantive Description*

A. Authority and Purpose

The ESG program was first established in section 101(g) of Public Law 99–500 (approved October 18, 1986, 100 Stat. 1783–242), making appropriations for FY 1987 as provided in H.R. 5313. The program was reauthorized with amendments in the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987, sections 411–417) (as amended, "McKinney Act"). Section 832(f) of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990, 42 U.S.C. 11371–11378) (NAHA), provided for the explicit eligibility of Indian tribes for ESG program assistance and established a set-aside allocation for Indian tribes that is equal to 1 percent of the amounts appropriated for the ESG Program. Funding was provided for this program in the Department's appropriation acts for fiscal years 1991 (Pub. L. 101–507, approved November 5, 1990), 1992 (Pub. L. 102–139, approved October 29, 1991), and 1993 (Pub. L. 102–389, approved October 6, 1992). Regulations governing the Emergency Shelter Grants (ESG) program are found at 24 CFR 576, except where superseded by statutory amendments under NAHA and the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act), as discussed below.

Assistance provided to Indian tribes and Alaskan Native villages under this NOFA will be used to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness. The term "emergency shelter" is defined in 24 CFR 576.3. This ESG set-aside allocation will increase the availability and expedite receipt of program funds to Native American communities.

(1) *Definition of "Indian tribe."* Section 832(f)(1) of NAHA provides that the definition of the term "Indian tribe" has the same meaning given that term in section 102(a)(17) of the Housing and Community Development Act of 1974. An Indian tribe means any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos and any Alaskan Native village, of the United States, that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 6701) before repeal of that Act. Eligibility for assistance under the Indian Self-Determination and Education Assistance Act is determined by the Bureau of Indian Affairs.

(2) *Emergency shelter* means any facility, the primary purpose of which is to provide temporary or transitional

shelter for the homeless in general or for specific populations of the homeless.

(3) *Continuum of Care.* This program makes possible the first steps in a "continuum of care" system designed to assist homeless persons find permanent housing and regain independent living. Outreach/assessment activities, drop-in centers, and essential life-saving services may be funded through this program. Funds may also be used to prevent homelessness through short-term rental assistance, legal assistance, and other services related to individuals and families remaining in their own housing. The program facilitates the creation, improvement, and operation of emergency shelters and transitional housing as well as the provision of services such as case management, substance abuse treatment, and job training. For projects serving families, the projects and activities should serve the family together and work to strengthen the family structure.

A continuum of care system consists of three basic components:

(a) A prevention plan and outreach activities designed to bring homeless persons into a system and assess their needs;

(b) Transitional housing combined with rehabilitative services; and

(c) Placement into permanent housing.

B. Statutory Amendments

This notice addresses section 832 of the NAHA (104 Stat. 4359), which contains numerous amendments to the McKinney Act, and several amendments to the ESG program in the 1992 Act. These statutory amendments supersede applicable provisions of the program regulations found at 24 CFR 576. The Department is publishing in this notice a description of the statutory changes to assist Indian tribes in complying with program requirements, including the NAHA and 1992 Act amendments.

National Affordable Housing Act Amendments: The NAHA changes are described in the following Sections I.B (1)–(6) of this NOFA.

(1) *Extension of eligibility to Indian tribes.* Section 832(f) of NAHA expressly extends eligibility for assistance under the ESG program to Indian tribes, and has the effect of applying the same formula as used in the Community Development Block Grant (CDBG) program for determining the amount of ESG funds to be set-aside for Indian tribes. The one percent figure for the Indian tribe set-aside is dictated by sections 832(f)(3) and 913(b) of NAHA.

(2) *Administrative costs.* Section 832(b)(1) of NAHA permits recipients to use up to 5% of an ESG Program grant for administrative purposes. This amount equals 5% of the total of amounts of ESG funds requested for all other eligible activities. Administrative costs include: costs of accounting for the use of grant funds; preparing reports for submission to HUD or to the State; obtaining program audits; conducting environmental reviews; coordinating program activities; and similar costs related to administering the grant. These costs do not include the costs of carrying out other activities eligible under the ESG program.

(3) *Use of funds for essential services.* Section 832(c) of NAHA increased from 20% to 30% the percentage of a grant that may be used to provide essential services. Consistent with this amendment, the Department will apply its waiver authority in section 414(b) of the McKinney Act to the new, higher 30% limitation. As with the previous 20% cap, the 30% limit is to be measured against the aggregate amount of each emergency shelter grant to an Indian tribe. Section 832(f)(6) of NAHA makes the limitations on the provision of essential services applicable to Indian tribes.

(4) *Use of funds for prevention of homelessness.* Homelessness prevention was added as a category of eligible activities by section 423 of the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100–688, approved November 7, 1988), which also treated these activities as "essential services." However, section 832(d) of NAHA withdraws homelessness prevention activities from categorization as "essential services", and imposes a separate limit of 30% of the aggregate amount of assistance to any recipient, including an Indian tribe, that may be used for efforts to prevent homelessness.

Thus, under NAHA, essential services and homelessness prevention are now each subject to a 30% cap. However, unlike the category of essential services, there is no statutory authority to permit a waiver of the cap on the amount of assistance that may be used for homelessness prevention activities. By its express terms, the statutory waiver is available only in the category of essential services.

(5) *Confidentiality of records for family violence services.* Section 832(e) of NAHA requires each recipient to certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services with ESG Program assistance. In addition, the address or location of any ESG-assisted housing used as a family violence shelter may not be made public without the written authorization of persons responsible for the operation of the shelter. This new certification is included in the application kit, as provided in Section III of this NOFA.

(6) *Establishes habitability standards.* Section 832(g) of NAHA requires the Secretary to prescribe the minimum standards of habitability appropriate to ensure that emergency shelters assisted by this program are environments that provide appropriate privacy, safety, and sanitary and other health-related conditions for homeless persons and families. A description of the Minimum Habitability Standards and the required certification is included in the application kit, as provided in Section III of this NOFA. The Habitability Standards that have been developed under section 832(g) of NAHA to apply to emergency shelters are as follows:

(a) *Structure and materials.* The shelter shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(b) *Access.* The shelter shall be accessible and capable of being utilized without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire.

(c) *Space and security.* Each occupant shall be afforded adequate space and security for the occupant's person and belongings. Each occupant shall be provided an acceptable place to sleep.

(d) *Interior air quality.* Every room or space shall be provided with natural or mechanical ventilation. The shelter shall be free of pollutants in the air at levels that threaten the health of the occupants.

(e) *Water supply.* The water supply shall be free from contamination at levels that threaten the health of the recipients.

(f) *Sanitary facilities.* Shelter occupants shall have access to sanitary facilities that are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(g) *Thermal environment.* The shelter shall have adequate heating and cooling facilities in proper operating condition.

(h) *Illumination and electricity.* The shelter shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(i) *Food preparation and refuse disposal.* All food preparation areas

shall contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(j) *Sanitary condition.* The shelter and its equipment shall be maintained in sanitary condition.

*Housing and Community Development Act of 1992 Amendments:* The 1992 Act changes are described in the following Sections I.B (7)–(9) of this NOFA.

(7) *Certification of involvement of homeless individuals and families.* The recipient must certify that, to the maximum extent practicable, it will involve homeless individuals and families, through employment, volunteer services, or otherwise, in providing services and in constructing, renovating, maintaining, and operating facilities, where assistance is provided for those activities under the program.

(8) *Termination of assistance.* The recipient may terminate assistance provided to an individual or a family only in accordance with a formal process established by the recipient that recognizes the rights of the individuals affected, which may include a hearing.

(9) *Eligibility of staff costs.* Staff costs relating to the operation of emergency shelters are specifically recognized as an eligible activity, but not more than 10 percent of the amount of any grant may be used for these costs.

C. CHAS and NEPA Requirements

(1) Indian tribes are not included in NAHA's definition of "jurisdiction", the entity charged with submitting a Comprehensive Housing Affordability Strategy (CHAS) under section 105 of NAHA. Therefore, Indian tribes are not required to submit a CHAS. Furthermore, Indian tribes will not be required to certify to consistency with the State's CHAS to receive ESG funding. The Department reiterates its position stated in adopting the CHAS Interim Rule (56 FR 4484, February 4, 1991) that, given the sovereign status of Indian tribes, a State cannot be deemed the appropriate jurisdiction to apply its housing strategy to programs administered by Indian tribes (see 56 FR 4481–82).

(2) The assumption of environmental responsibilities specified in section 104(g)(1) of the Housing and Community Development Act of 1974 was authorized for certain recipients of assistance under the McKinney Act, pursuant to section 443 of the McKinney Act. Assumption of the responsibilities for the ESG program is set forth in 24 CFR 576.52, and shall apply to Indian tribes in the same manner as described for a unit of general local government or territory. When the tribe does not have the legal capacity to assume the environmental responsibility (see 24 CFR 58.11), the appropriate HUD Office of Native American Programs (ONAP) Field Office will conduct the environmental review.

D. Allocation Amounts

This notice announces the availability of a total of $1,469,000 in funding provided by the Department's appropriations acts for fiscal year 1994 and unused funds from fiscal year 1993 for competitive grants to Indian tribes for emergency shelter grants. Indian Program Office set-aside allocations of the total amount are detailed in the following chart:

ALLOCATION OF ESG SET-ASIDE FOR INDIAN TRIBES BY HUD ONAP AREA OFFICES FOR FY 1994

| | |
|---|---|
| Chicago | $244,817 |
| Oklahoma City | 290,207 |
| Denver | 277,939 |
| Phoenix | 392,153 |
| Seattle | 126,870 |
| Anchorage | 137,014 |
| Total: | 1,469,000 |

HUD reserves the right to negotiate reductions in the amounts requested by applicants based on the overall demand for the funds. HUD further reserves the right to reallocate these amounts as provided in Section I.G, Ranking and Selection, of this NOFA. Each Indian tribe must spend all of the grant amounts it was awarded within 24 months of the date of the grant award by HUD. Any emergency shelter grant amounts that are not spent within this time period may be recaptured and added to the following fiscal year's ESG set-aside for Indian tribes.

E. Eligibility and Threshold Requirements

Applications are invited from Indian tribes for assistance under the emergency shelter grants set-aside program. Private nonprofit organizations are not eligible to apply directly to HUD for a grant, but may receive funding from a grantee if the grantee determines that the nonprofit has the financial and organizational capacity to carry out the proposed activities.

The selection process for the Indian tribe set-aside program consists of a preliminary threshold review. HUD will review an application to determine whether:

(1) The application is adequate in form, time, and completeness;

(2) The applicant is eligible; and

(3) The proposed activities and persons to be served are eligible for assistance under the program.

F. Rating Criteria

Applications that fulfill each of the threshold review requirements described in Section I.E, Eligibility and Threshold Requirements, of this NOFA will be rated up to 1,000 points based on the following criteria. Successful applicants must receive points under each of the criteria.

(1) *Applicant capacity (300 points).* HUD will award up to 300 points to an applicant that demonstrates the ability to carry out activities under its proposed program within a reasonable time, and in a successful manner, after execution of the grant agreement by HUD. Reviewers' knowledge of the applicant's previous experience will weigh heavily in the scoring. Documented evidence of poor or slow performance will enter strongly into that determination. The applications that rate highest on this criterion will show substantial experience as an organization and/or staff in past endeavors that are directly related to the proposed project.

(2) *Need (200 points).* HUD will award up to 200 points to an applicant that demonstrates the existence of an unmet need for the proposed project in the area to be served. The applicants with the highest scores on this criterion will be the ones that: (a) Clearly define the unmet housing and essential services needs of the homeless population proposed to be served in the area to be served by the project; (b) demonstrate in-depth knowledge of the population to be served and its needs; and (c) set forth an outreach strategy that assures that the intended population will be served.

(3) *Service to homeless population (200 points).* HUD will award up to 200 points to an applicant that proposes to serve that part of the Indian homeless population that is most difficult to reach and serve, i.e., those persons having a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, sleeping accommodations for human beings. In urban areas, this is usually referred to as living "on the street." To the extent that Indians living on reservations live in such situations (e.g., sleeping in cars, abandoned structures, out in the open), they meet the definition of living in conditions similar to "living on the street."

HUD will focus upon proposed outreach and intake plans, and, especially, the degree to which such plans would maximize the likelihood that homeless persons would be served

by the proposed project. The outreach strategy/intake procedures to seek out and evaluate the needs of the population to be served should be clearly described in the application.

(4) *Appropriateness of essential services (300 points).* HUD will award up to 300 points to an applicant that proposes essential services that: (a) are appropriate to the needs of the population proposed to be served; (b) are used or coordinated with existing sources of supportive services and networks of support in the community; and (c) help, to the degree possible, to move residents to longer term housing situations. Applicants should describe what services are available and how they will make those services accessible to the people they serve. In addition, HUD will evaluate the means by which the people to be served will be assisted in moving to permanent housing that is appropriate and affordable. Applicants should describe what resources are available to assist the population they serve to find permanent housing.

G. Ranking and Selection

Applications from Indian tribes within the area served by the applicable HUD Office of Native American Programs will be assigned a rating score and placed in ranked order, based upon the rating criteria listed in Section I.F of this NOFA. Only those applications receiving points under each of the rating criteria, and at least 500 points in total, will be given funding consideration. In the final stage of the selection process, qualified applicants will be selected for funding in accordance with their ranked order within each area or field office, to the extent that funds are available within that area or field office.

In the event of a tie between applicants, the applicant with the highest total points for rating criterion (2), Need, in Section I.F of this NOFA, will be selected. In the event of a procedural error that, when corrected, would warrant selection of an otherwise eligible applicant under this NOFA, HUD may select that applicant when sufficient funds become available.

Depending on the availability of funds, the Department may fund qualified applications regardless of location. If an Indian program office has insufficient funds to make awards to all of its qualified applicants, the Department may reallocate funds to this office from any other Indian program office that has funds remaining after making awards to all of its qualified applications.

**II. Application Process**

*A. Obtaining Applications*

Application packages will be available beginning June 28, 1994, from the HUD Offices of Native American Programs listed in the Appendix to this NOFA.

*B. Submitting Applications*

Information regarding the submission of applications is included in the package.

An original application must be received at the HUD Office of Native American Programs serving the area in which the applicant's project is located by no later than 4:00 p.m. local time (i.e., the time in the office where the application is submitted) on September 12, 1994. A list of Offices of Native American Programs appears as an Appendix to this NOFA. Applications transmitted by FAX will not be accepted.

At the time of submission, one copy of the completed application must also be sent to HUD's Office of Special Needs Assistance Programs at the address listed at the beginning of this NOFA. A determination that an application was received on time will be made solely on receipt of the original application at the Office of Native American Programs.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of ineligibility brought about by unanticipated delays or other delivery-related problems.

**III. Checklist of Application Submission Requirements**

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

(1) Applicant Information, including name, address, contact person, and telephone number.

(2) Standard Form 424;

(3) Certifications of compliance with the requirements of:

(a) 24 CFR 576.21(a)(4)(ii), concerning assistance provided for homelessness prevention activities; 567.51(b)(2)(v), concerning the funding of ESG activities in commercial facilities; 576.73, concerning the continued use of buildings as emergency shelters or the population to be served; 576.75, concerning building standards; 576.77, concerning assistance to the homeless; and 576.80, concerning displacement and relocation;

(b) The Indian Civil Rights Act (25 U.S.C. 1301), and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b));

(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(d) The Age Discrimination Act of 1975 (42 U.S.C. 6101–07);

(e) Executive Orders 11625, 12432, and 12138, promoting the use of minority business enterprises and women-owned businesses to the maximum extent consistent with the Indian Self-Determination and Education Assistance Act;

(f) The requirements of 24 CFR part 24, concerning the Drug-Free Workplace Act of 1988;

(g) Section 832(e)(2)(C) of NAHA, concerning the confidentiality of records pertaining to any individual provided family violence prevention or treatment services;

(h) Section 832(g) of NAHA, concerning minimum habitability standards prescribed by the Department;

(i) Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR part 58, concerning assumption of the HUD environmental review responsibilities;

(j) Section 576.71(b)(2)(vii), concerning compliance with tribal law in the submission of an application for an emergency shelter grant, and possession of legal authority to carry out emergency shelter grant activities;

(k) Prohibitions on the use of Federal funds for lobbying, and the completion of SF–LLL, Disclosure Form to Report Lobbying, if applicable; and

(l) 42 U.S.C. 11375(c)(7), as added by the Housing and Community Development Act of 1992, concerning the involvement through employment, volunteer services, or otherwise, to the maximum extent practicable, of homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities.

(4) Form HUD–2880, Applicant/Recipient Disclosure/Update Form, if applicable.

(5) Project Summary and Proposed Budgets.

(6) Description of the homeless population to be served.

(7) Facility Description.

(8) Narrative addressing the rating criteria.

(9) Matching funds certification as required under § 576.51(b)(2)(ii),

§ 576.71, and section 415(a) of the McKinney Act (42 U.S.C. 11375(a)).

## IV. Clarification of Applicant Information

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in an applicant's application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

## V. Other Matters

### *A. Environmental Impact*

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk in the Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

### *B. Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice announces the availability of funds set aside for Indian tribes for emergency shelter activities, and invites applications from eligible applicants.

### *C. Impact on the Family*

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that this notice, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance, and general well-being. Since any impact on families is beneficial, no further review is considered necessary.

### *D. Section 102, HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures*

*Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

*Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

### *E. Section 103 HUD Reform Act*

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD) (this is not a toll-free number). The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel or Headquarters counsel for the program to which the question pertains.

### *F. Section 112 of the Reform Act*

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b), added by section 112 of the Reform Act, contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about part 86 should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

### *G. Prohibition Against Lobbying Activities*

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior

and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

H. The Catalog of Federal Domestic Assistance program number is 14.231.

**Authority:** 42 U.S.C. 11376; 42 U.S.C. 3535(d).

Dated: June 21, 1994.

**Andrew M. Cuomo,**

*Assistant Secretary for Community Planning and Development.*

**APPENDIX—HUD OFFICES OF NATIVE AMERICAN PROGRAMS**

All HUD numbers may be reached via Telecommunications Devices for the Deaf (TDD) by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or (202) 708–9300 (not a toll-free number). Any additional TDD number that is available for an individual program office is listed after the appropriate office's address.

Chicago (includes all States east of the Mississippi River plus Iowa and Minnesota):

Mr. Leon Jacobs, Administrator, Chicago Office of Native American Programs, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 886–4532; TDD (312) 353–7143.

Oklahoma City (includes Oklahoma, Louisiana, Kansas, Missouri and Texas):

Mr. Hugh Johnson, Administrator, Oklahoma City Office of Native American Programs, Alfred P. Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4101; TDD (405) 231–4181.

Denver (includes Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming):

Mr. Vernon Haragara, Administrator, Denver Office of Native American Programs, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607; (303) 672–5462; TDD (303) 844–6158.

Phoenix (includes Arizona, New Mexico, California, and Nevada):

Mr. Raphael Mecham, Administrator, Native American Programs Office, Two Arizona Center, 400 N. Fifth St., Suite 1650, Arizona Center, Phoenix, AZ 85004–2361; (602) 379–4156; TDD (602) 379–4461.

Seattle (includes Washington, Idaho, and Oregon):

Mr. Jerry Leslie, Administrator, Seattle Office of Native American Programs, Seattle Federal Office Building, 909 1st Ave., Seattle, WA 98104–1000; (206) 220–5270; TDD (206) 220–5185.

Anchorage (includes Alaska):

Ms. Colleen Craig, Director, Community Planning and Development Division, Anchorage Office, Federal Building, 222 W. 8th Ave., #64, Anchorage, AK 99513–75371; (907) 271–3669; (TDD only via 1–800–877–8339).

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Part VII

# Department of Transportation

Research and Special Programs Administration

49 CFR Part 195

Regulatory Review: Hazardous Liquid and Carbon Dioxide Pipeline Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS–127; Amdt. 195–52]

RIN 2137–AC27

## Regulatory Review: Hazardous Liquid and Carbon Dioxide Pipeline Safety Standards

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking amends miscellaneous hazardous liquid and carbon dioxide pipeline safety standards to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. The changes result from the regulatory review RSPA carried out in response to the President's directive of January 28, 1992, on reducing the burden of government regulation. The changes reduce costs in the liquid pipeline industry without compromising safety.

**EFFECTIVE DATE:** This regulation is effective July 28, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** J. Willock, (202) 366–2392, regarding the subject matter of this final rulemaking, or the Dockets Unit, (202) 366–5046, regarding copies of this final rulemaking or other material that is referenced herein.

**SUPPLEMENTARY INFORMATION:**

### Background

In a January 28, 1992, memorandum, the President wrote to Department and agency heads about the need to reduce the burden imposed by government regulation. The President was concerned that agencies were not doing enough to review and revise existing regulations to eliminate unnecessary and overly burdensome requirements. The President recognized that regulations that do not keep pace with new technologies and innovations impose needless costs and impede economic growth.

In response to the President's memorandum, DOT published a notice requesting public comment on the Department's regulatory programs (57 FR 4745; Feb. 7, 1992). Commenters were asked to identify regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, impose needless costs or red tape, or overlap or conflict with other DOT or federal regulations. The deadline for submitting comments was March 2, 1992.

RSPA received comments from six organizations about the pipeline safety regulations in part 195. Comments were from three regulated pipeline companies, a pipeline trade association, a state pipeline safety agency, and a federal agency. RSPA considered all comments in its review of the regulations, and these comments are available in the docket. Some comments will be considered in future rulemakings. Additionally, RSPA has published a separate rulemaking "Update of Standards Incorporated by Reference" (58 FR 14519; March 18, 1993) which updates the editions of the industry standards that are incorporated in part 195.

On November 27, 1992, RSPA published a Notice of Proposed Rulemaking, NPRM, (57 FR 56304) proposing 18 changes to the regulations based on the comments received from the public and asked for further comments regarding the proposed changes. RSPA received comments from 21 organizations: 15 pipeline companies, 3 pipeline trade associations, 2 environmental organizations, and 1 county government. RSPA considered all comments in preparation of the final rulemaking and the comments are available in the Docket.

### Advisory Committee

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC), consisting of 15 members, was established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline regulations. RSPA implemented the committee balloting process by mail. After initial balloting, the process allowed each member to review the ballots, including comments, of all other members, and to change his or her vote or initial comment if desired. Although some THLPSSC members did not vote on every proposed change, a tally of the second ballots showed that a large majority of THLPSSC members found all the proposed changes technically feasible, reasonable, and practicable. Nonetheless, in developing the final regulations, RSPA considered all final THLPSSC votes and comments, including minority positions. The following discussion explains how RSPA treated THLPSSC positions and public comments on the proposed amendments in developing the final rule.

### Changes to Part 195 Safety Standards

The following discussion explains the changes to various standards in part 195:

*Section 195.1 Applicability.*

*Offshore production.* Part 195 does not apply to pipelines used in offshore production, whether on the Outer Continental Shelf or in state offshore waters. However, this exception is clearly stated in part 195 only for production on the Outer Continental Shelf (§ 195.1(b)(5)). To clarify that all offshore pipelines used in production are outside part 195, RSPA proposed to delete from § 195.1(b)(5) the phrase "on the Outer Continental Shelf".

The 10 THLPSSC members who voted on the proposed amendment to § 195.1(b)(5) all approved the amendment.

In addition, RSPA received comments from three operators and two pipeline-related associations in support of the amendment and no adverse comments. Therefore, § 195.1(b)(5) is amended as proposed in the NPRM.

We also requested comments on whether there is a gap in the regulation of production lines in state offshore waters. Only one commenter responded. This commenter opined that existing state and federal programs adequately regulate production lines in state waters. In Louisiana, the Departments of Natural Resources and Environmental Quality were said to have comprehensive regulations on facility installation, operation, integrity, and removal, and sufficient authority to address any "gap" that is identified. Since the other states with production lines in state waters have similar regulations, RSPA does not believe there is a gap in the regulation of production lines in state waters.

*In-plant piping.* Part 195 does not apply to pipeline transportation through onshore production, refining, or manufacturing facilities, or storage or in-plant piping systems associated with such facilities (§ 195.1(b)(6)). Because the physical distinction between a regulated pipeline serving a plant and unregulated in-plant piping is unclear, RSPA proposed to add a definition of "in-plant piping system" to § 195.2. The definition proposed was: "*In-plant piping system* means piping that is located on the grounds of a plant and used to transfer hazardous liquid or carbon dioxide between plant facilities or between plant facilities and a pipeline, not including any device and associated piping that are necessary to

control pressure in the pipeline." The NPRM explained that we would consider in-plant piping to extend to the plant boundary in the absence of a necessary pressure control device on plant grounds.

All ten THLPSSC members who voted on this proposal supported it. However, four members believed that because the NPRM primarily concerned pipeline transportation rather than production, refining, or manufacturing plants, it did not give plant owners adequate notice that the proposed definition could affect plant piping. These members wanted RSPA to publish a separate NPRM on the subject of in-plant piping.

RSPA does not agree that another NPRM is needed. The subject of in-plant piping and the associated issues were clearly discussed in the published NPRM. Also, all interested persons, including plant owners as well as pipeline operators, were given an opportunity to comment on the subject of in-plant piping.

RSPA received comments on the proposed definition from seven operators, two pipeline-related associations, and one state agency. Two operators and one association fully supported the proposal.

One operator and a pipeline-related association thought plant owners were not adequately notified of the proposed rule, and that RSPA should treat the subject in a separate NPRM. Our position on this issue is given supra in response to a similar criticism by four THLPSSC members.

Another operator was concerned that the proposed definition would cause operator-owned components, such as pipe, meters, instruments, and manifolds, that are located on plant grounds downstream from the operator's pressure control device to fall outside part 195. The operator was worried that other agencies would regulate these components as non-transportation related facilities. We are not persuaded, however, that the potential for such regulation is sufficient reason to exclude the components from the definition of in-plant piping system. The aim of the proposed definition was to distinguish unregulated piping, not to limit the jurisdiction of other government agencies.

In contrast, an operator of gathering and processing facilities was concerned that part 195 would apply to plant piping that lies between any necessary pressure control device and the connection to a pipeline. This commenter apparently did not realize that such piping is subject to part 195. RSPA has applied part 195 to such piping because it is subject to pressure which is controlled by a device operators must have to meet § 195.406(b). However, this application has had little effect on plant owners, because we hold the pipeline operator, not the plant owner, responsible for compliance.

An operator commenting on the plant device exclusion in the proposed definition advised us to change "control pressure" to "prevent overpressure." This commenter said the change would avoid making pipeline operators responsible under part 195 for nonessential pressure control devices. We agree the suggested rewording would better convey the intent of the proposal. But, in the final definition, we have changed "control pressure in the pipeline" to "control pressure in the pipeline under § 195.406(b)" to convey the intent even more precisely.

The state agency commented that if piping on plant grounds does not include a device necessary to control pipeline pressure, the jurisdiction of part 195 over the pipeline should not end at the plant boundary. Instead, the state agency recommended ending jurisdiction at a component inside the plant, such as a flange, where the pipeline can be isolated for purposes of testing. Although operators may use such components, part 195 does not require that they be on the pipeline. Also, we believe the plant boundary is a more convenient demarcation of in-plant piping than an unspecific inside-the-plant component. Thus, the state agency's comment is not incorporated in the final definition.

The state agency, an operator, and a pipeline-related association were concerned that because segments of transfer piping located off plant grounds were not included in the proposed definition, a large number of short pipelines would come under part 195. RSPA recognizes that production, refining, or manufacturing plants often install transfer piping off plant grounds. A plant may use this piping to transfer hazardous liquids between its different facilities located on the same grounds; between its different facilities located on separate grounds (usually separated by a roadway, railway, waterway, or industrial area); between its facilities and a transportation system, such as a railroad or pipeline; or between its facilities and the facilities of another plant or industrial consumer. The three commenters thought the off-grounds segments should qualify as in-plant piping if they connect facilities of the same plant. The association also wanted to include under the definition off-grounds segments that connect facilities of different plants. In addition, the operator and association argued that the off-grounds segments pose minimum risk to public safety and the environment, because the segments generally are located in industrial areas, roadways, or railways. The association further argued that a plant has the same operational control, including response capability, over the off-grounds segments as it does over piping on plant grounds.

In response to these comments, we note that § 195.1(b)(6) echoes section 201(3) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA), (49 U.S.C. app. 2001(3)), which excludes certain "in-plant piping systems" from regulation under the HLPSA. Since neither the HLPSA nor its legislative history explain "in-plant piping," we adopt an ordinary, reasonable understanding of the term. Therefore, we do not accept the interpretation that the term includes piping that crosses the property of others outside plant grounds. However, many plants are separated by a public thoroughfare, and plant transfer piping crosses the thoroughfare. A single public thoroughfare would include any road, from a country lane to an interstate highway, but it does not include a railroad. Because transfer piping that crosses such thoroughfares is comparable in most respects to other in-plant piping, RSPA considers the in-plant piping exception to include the thoroughfare crossings. The thoroughfare exception does not apply to inter-facility lines or delivery lines, because these lines are distinct from in-plant piping. We did not intend the proposed definition of "in-plant piping systems" to expand our present interpretation of the term. So the final definition does not incorporate any of the comments concerning piping located off plant grounds other than for thoroughfare crossings.

However, the proposed definition's first use of the term "pipeline" is changed to "pipeline or other mode of transportation." This change is needed to include, within the definition, piping on plant grounds that transfer hazardous liquid or carbon dioxide between plant facilities and modes of transportation other than pipeline.

*Terminal facilities.* Part 195 does not apply to the transportation of hazardous liquid or carbon dioxide by vessel, aircraft, tank truck, tank car, or other vehicle, or by terminal facilities used exclusively to transfer hazardous liquid or carbon dioxide between such modes of transportation (§ 195.1(b)(7)). RSPA proposed to amend § 195.1(b)(7) to clarify that terminal facilities located off terminal grounds are subject to part 195,

and to distinguish unregulated terminal facilities from a regulated pipeline entering or leaving the terminal. As with the proposed in-plant piping definition, any device and associated piping on terminal grounds necessary to control pressure in a regulated pipeline would not be excepted from part 195.

The THLPSSC voted to approve this proposal, but four members believed the NPRM did not give terminal owners adequate notice that the proposed amendment could affect their piping. These members wanted RSPA to publish a separate NPRM on the subject. For the reasons stated supra in response to a similar argument by these THLPSSC members concerning in-plant piping, RSPA does not agree that another NPRM is needed.

Five operators and two pipeline-related associations commented on the proposed amendment to § 195.1(b)(7). Of these commenters, two operators and one association agreed with the proposal.

A few commenters expressed the same concerns about the proposed amendment to § 195.1(b)(7) as they did about the proposed in-plant piping definition. These concerns were that the NPRM did not adequately notify plant (terminal) owners of the proposed rule, and that some operator-owned components located on plant (terminal) grounds would fall outside part 195. Our response to these concerns is the same as stated supra regarding in-plant piping.

In regard to transfer lines located outside terminal grounds at ports, an operator and a pipeline-related association pointed out that the U.S. Coast Guard regulates transfers between terminal storage and dock facilities. These commenters suggested that RSPA and Coast Guard develop a memorandum of understanding to limit Coast Guard's regulations to dock facilities.

We recognize that Coast Guard and RSPA jurisdictions overlap in port areas, but the two agencies have different responsibilities. Also, the overlap does not automatically result in regulatory conflicts, and the commenters did not mention any. Nonetheless, though we have not changed the final rule as a result of this comment, in enforcing part 195 at port areas, RSPA will act appropriately to resolve any unnecessary regulatory burdens.

*Carbon dioxide injection system.* Section 195.1(b)(8) provides that part 195 does not apply to "[t]ransportation of carbon dioxide downstream from a point in the vicinity of the well site at which carbon dioxide is delivered to a production facility." RSPA proposed to amend this section to clarify that the exception covers pipelines used in the injection of carbon dioxide for oil recovery operations.

The THLPSSC approved the proposed amendment (10 voted in favor and 5 did not vote), and we received no adverse comments from the public. The proposed amendment to § 195.1(b)(8) is, therefore, adopted as final.

*Section 195.2 Definitions.*

The proposed revision of the definition of "Secretary" is not adopted in this rulemaking. Instead, it is being handled in an omnibus rulemaking covering all regulations involving pipeline safety.

The definition of "In-plant piping system" is discussed above in § 195.1 Applicability.

Two commenters objected to the proposed definition for petroleum products because of its use of the terms "flammable", "toxic", and "corrosive" which are not defined under part 195. The commenters stated that absent specific definitions for these terms, their applicability could be unclear.

RSPA agrees with the comments about the lack of clarity in the proposed definition for petroleum products. So, the final rule for this section includes new definitions for "flammable", "toxic", and "corrosive" that come from the definitions contained in 49 CFR part 173 for Transportation and Packaging of Hazardous Materials for the terms "flammable liquid", "poisonous material", and "corrosive material", respectively. RSPA has adopted the definition of "poisonous material" for "toxic" because it considers the terms synonymous.

*Sections 195.2, 195.106, 195.112, 195.212 and 195.413 (Nominal Outside Diameter of the Pipe in Inches)*

RSPA proposed to standardize the dimensioning of pipe size throughout part 195 (Changes are made to §§ 195.2, 195.106(b), 195.106(c), 195.112(c), 195.212(b)(3)(ii) and 195.413(a)). All 10 THLPSSC members who voted were in favor of the proposal and no commenter objected thereto. Accordingly, the proposed amendment is adopted as final.

*Section 195.3 Matter incorporated by reference.*

Section 195.3 sets out the general requirements for the incorporation in the regulations of industry standards for the design, construction and operation of hazardous liquid and carbon dioxide pipelines. Paragraph 195.3(a) states that incorporation of a document by reference has the same force as if the document were copied in the regulations. Some operators have misinterpreted this section to mean that they must comply with all of the terms contained in a referenced document. Accordingly, RSPA hereby revises § 195.3(a) to clarify that an entire document is not incorporated when the document is incorporated by reference; rather, only those portions specifically referenced in the regulations are incorporated.

The rule is being revised to conform to a recent update of references in another rulemaking (Update of Standards Incorporated by Reference (58 FR 14519; March 18, 1993)). Also, references to ASME/ANSI Codes B31.8 and B31.G are being added. The 10 THLPSSC members who voted and 7 commenters favored the revision.

*Section 195.5 Conversion to service subject to this part.*

Section 195.5 regulates the conversion of steel pipelines to hazardous liquid or carbon dioxide service that is subject to part 195. Under § 195.5(a)(4), a converted pipeline must be hydrostatically tested to substantiate the maximum operating pressure (MOP) permitted by § 195.406.[1]

To substantiate the MOP of a converted pipeline, an operator must know the pipe design pressure (see current § 195.406(a)(1)). Consequently, if pipe design pressure is unknown, a steel pipeline may not be converted under § 195.5. Although the design pressure of components is an MOP factor under § 195.406(a)(2), pipeline components are normally designed to be as strong or stronger than attached pipe. Thus, pipe design is the critical factor in substantiating MOP under § 195.5(a)(4), and lack of knowledge of component design pressure is not a significant safety concern.

RSPA proposed to amend § 195.5 to permit conversion using an approach found in section 845.214 and Appendix N of ASME B31.8 for gas pipelines whose design pressure is unknown. Under this proposal, operators would pressure test the pipeline under Appendix N until pipe yield occurs. Instead of design pressure, this yield test pressure would be used to compute MOP by applying certain reduction factors to 80 percent of the first pressure that produces pipe yield.

All THLPSSC members who voted on the proposed amendment to § 195.5

[1] Section 195.5(a)(4) actually uses the term "maximum allowable operating pressure," but for consistency with § 195.406, this term is changed below to MOP by removing the word "allowable."

supported it in concept. However, two members thought the wording of Appendix N should be copied directly into part 195 to avoid referencing a gas pipeline code in liquid pipeline regulations. We believe the principles of Appendix N apply equally to gas and liquid pipelines. And since the B31.8 Code is widely used, operators of hazardous liquid or carbon dioxide pipelines will not find it difficult to obtain and apply Appendix N.

RSPA received five comments on the proposed amendment to § 195.5. Two operators and a pipeline-related association agreed with the proposed amendment.

One operator suggested that if pipelines operating at less than 20 percent of specified minimum yield strength (SMYS) are subject to § 195.5, RSPA should allow operators up to 10 years to meet the testing requirements. At present, none of the standards in part 195, including § 195.5, applies to pipelines operating at less than 20 percent of SMYS (see § 195.1(b)(3)). However, this commenter may have had in mind § 206 of the Pipeline Safety Act of 1992 (Pub. L. 102–508), which provides that exceptions to regulations under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. app. 2001 *et seq.*), such as part 195, may not be based solely on low internal stress. Because of this statutory mandate, RSPA has proposed to apply part 195 to certain low-stress hazardous liquid pipelines (Docket PS–117; 58 FR 12213; March 3, 1993). Still, that proposal would not require any existing low-stress hazardous liquid pipeline to be tested under § 195.5, because such pipelines would not be converted pipelines. Of course, if part 195 becomes applicable to low stress pipelines, any pipeline converted to low stress hazardous liquid service subject to part 195 would have to be tested under § 195.5. But, since testing is the backbone of the conversion process, RSPA does not believe § 195.5 should be amended to extend the time for testing to 10 years.

A state agency was concerned that if test pressure must be measured at the high elevation point of test segments, the test could stress the low point of the segment beyond yield. However, the Appendix N test method should not result in overstress at the low elevation, because the method does not require increases in test pressure after the first yield occurs in the test segment.

In a separate rulemaking proceeding (Docket No. PS–124; 57 FR 39572; August 31, 1992), RSPA proposed to allow the use of the Appendix N method in converting pipelines to gas service under 49 CFR 192.14. This gas pipeline conversion standard is similar to § 195.5. Comments to that notice argued that pressure testing to yield is unnecessary to qualify certain pipelines that operate at low stress (generally pipelines 12¾ inches or less in nominal outside diameter operating at pressures of 200 psig or less). RSPA believes these comments are also relevant to hazardous liquid pipelines. All other factors being equal, hazardous liquid pipelines operating at low internal stress present less risk of failure from time-dependent defects than higher stress hazardous liquid pipelines. Because of the lower risk, RSPA has modified the final rule to provide that pipelines 12¾ inches or less in nominal outside diameter to be operated at a pressure of 200 psig or less may be converted without testing to yield. The MOP of such pipelines may be determined under § 195.406 by using 200 psig as pipe design pressure.

The proposed rule has been redrafted to improve clarity, to better relate conversion to design pressure and MOP under § 195.406, and to include the changes discussed supra. In the final rule, the proposed amendment to § 195.5(a)(1) is revised and published as an amendment to § 195.406(a)(1). This latter section deals specifically with pipe design pressure and MOP. As set forth infra, revised § 195.406(a)(1) provides that when pipe design pressure is unknown for steel pipelines being converted, a reduced value of first yield hydrostatic test pressure may be used as design pressure to compute MOP. If the pipeline to be converted is 12¾ inches or less in nominal outside diameter and is not yield tested, 200 psig may be used as design pressure.

*Section 195.8 Transportation of hazardous liquid or carbon dioxide in pipelines constructed with other than steel pipe.*

The proposal to replace the word "he" with "the Secretary" to remove any implication of gender is not adopted in this rulemaking. Instead, this proposal will be handled in an omnibus rulemaking to make minor clarifications and error corrections covering all the pipeline safety regulations.

*Section 195.50 Reporting accidents and § 195.52 Telephonic notice of certain accidents.*

Sections 195.50(f) and 195.52(a)(3) require operators to prepare reports and give telephonic notice of accidents, respectively, when the estimated property damage due to an accident exceeds $5,000. RSPA discovered from its regulatory review and previous enforcement cases that a significant amount of confusion exists among pipeline operators as to which cost estimates must be included in calculating the "estimated property damage to the property of the operator or others * * *" Frequently, when reporting accidents, pipeline operators fail to include as "property damage" the fair market value of the product released or those costs associated with clean-up and recovery efforts. RSPA believes these costs should be included when reporting accidents.

Because the $5,000 reporting requirement requires the reporting of minor accidents, RSPA proposed amending §§ 195.50(f) and 195.52(a)(3) to increase the reporting threshold to $50,000, the same level as required in 49 CFR part 192 and to include as property damage the value of the product released and the costs associated with clean-up and recovery efforts. The THLPSSC voted 10 to 0 in favor of the change (5 members did not vote). Two of those favoring the proposed changes recommended that RSPA modify the final rule to limit property damage to fair market value of the lost product and initial clean-up and product recovery costs. One member said that clean-up and recovery costs should not be included in total property damage.

Three commenters disagreed with the proposed changes and recommended that the rule be withdrawn. One complaint was that the statistical base would be discontinuous because, in the future, RSPA would not receive information on accidents costing between $5,000 and $50,000. Another complaint was that the change could affect the development of environmental protection requirements. RSPA understands that a change in reporting levels will cause a slight skewing due to truncation of the data, but believes requiring operators to report accidents based solely on the $5,000 property damage criterion is unnecessary and burdensome. Significant accidents will still be reported because the other criteria (especially those that are environmentally related) requiring reports will be unchanged: (1) Explosion or fire, (2) loss of 50 barrels of liquid, (3) escape of five barrels a day of highly volatile liquids, (4) a death, (5) bodily harm, or (6) resulted in the pollution of any stream. Because these requirements remain unchanged, those operators with more frequent small releases will still be identified. As to a skewing of the data, those organizations that keep track of such statistical data should be able to make adjustments to account for such changes. Also, as explained in the NPRM, this change will make the liquid

safety reporting requirements consistent with the gas safety reporting requirements which will eliminate confusion. The rule change should have little, if any, effect on the environment because the same spill volume reporting criteria remain in effect. Only the dollar level of the reporting criterion is being changed.

Two commenters supported the rule changes as they were written. Five others favored the changes, but proposed modification of the rules to explain more fully the meaning of "estimated total damage" in order to spell out the items that must be covered. They said that "estimated total damage" is ambiguous and confusing and subject to interpretation. One commenter stated that the costs of subsurface restoration should be excluded from property damage because it is nearly impossible to estimate the subsurface restoration costs within the time allowed to report the accident.

RSPA agrees that early estimates of the costs to clean-up a liquid spill may not be exact; however, the operator should, at a later date, submit a revised report that provides more reliable cost figures for the clean-up.

RSPA is clarifying the issue by amending § 195.50(f) to read: "(f) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000" and § 195.52(a)(3) to read: "(3) Caused estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000."

*Section 195.106 Internal design pressure.*

Section 195.106(a) prescribes the formula for calculating the design pressure of steel pipe. In addition, § 195.106(b) regulates the pipe yield strength used in the design pressure formula. When the specified minimum yield strength (SMYS) of pipe is unknown, § 195.106(b) requires that yield strength be derived from tensile tests on random samples of pipe. Based on a comparable gas pipeline safety standard (49 CFR 192.107(b)(2)), RSPA proposed to amend § 195.106(b) to allow operators to use 24,000 psi as yield strength if pipe of unknown SMYS is not tensile tested. Editing changes to § 195.106(b) were also proposed.

The 10 THLPSSC members who voted on the proposed amendment of § 195.106(b) supported it (5 did not vote). In addition, RSPA received comments from four operators and one pipeline-related association. The association and three of the operators agreed with the proposal. One of these operators suggested further editing, part of which RSPA has included in the final rule.

One operator was concerned that the proposed rule could unjustifiably reduce the MOP of its pipelines. The operator said its pipelines are made of Grade B pipe (yield strength at least 35,000 psi) or better. However, some pipelines may contain pipe for which documentation of yield strength or tensile testing does not exist. For such pipe, without new tensile testing, yield strength would have to be assumed to be 24,000 psi. The operator suggested that RSPA allow operators to use appropriate evidence besides tensile tests to demonstrate the yield strength of pipe.

In response to this comment, we note, first, that the proposed amendment to § 195.106(b) would not affect the design pressure of existing pipelines unless they are replaced, relocated, or otherwise changed (see § 195.100). Second, § 195.106(b) currently requires operators to use as yield strength either SMYS or a value based on tensile testing. So the operator's apparent difficulty in verifying yield strength is a problem of compliance with the current rule. Third, the proposed rule would relax the burden of tensile testing only when MOP does not exceed the level that corresponds to a yield strength of 24,000 psi. When a higher MOP is desired, operators must use the tensile testing option. Finally, RSPA is not aware of any acceptable evidence of the yield strength of pipe of unknown SMYS apart from appropriate tensile testing. Thus, the amendments to § 195.106(b), as discussed above, are adopted.

*Section 195.204 Inspection-general.*

The THLPSSC voted 10 to 0 in favor of the proposed change to make the language gender neutral and, except for a minor correction, no objections were received from commenters. The proposed change is adopted as corrected.

*Section 195.228 Welds; standards of acceptability.*

One of the comments we received on proposed amendments to nondestructive testing requirements under § 195.234(e) (discussed infra) concerned the standards for acceptance of weld flaws (§ 195.228(b)). A pipeline-related association asked us to incorporate by reference the alternative acceptance standards for girth welds that are in the Appendix to American Petroleum Institute (API) Standard 1104 (17th edition). For weld acceptability, § 195.228(b) now references the standards in Section 6 of API Standard 1104.

In a notice of proposed rulemaking involving our review of the gas pipeline safety standards in 49 CFR part 192 (Docket PS–124; 57 FR 39572; August 31, 1992), RSPA proposed to allow gas operators to apply the API appendix in addition to section 6 criteria. Although that proposal was based on a petition by API to incorporate the appendix by reference in both parts 192 and 195, we overlooked the request to include such a proposal in the present rulemaking.

In the part 192 rulemaking, RSPA's gas pipeline safety advisory committee voted to support the proposed amendment. Also, all but one of the public comments were in favor of allowing use of the Appendix of API Standard 1104.

The dissenting commenter was concerned that industry inspection personnel may not be qualified to apply the appendix. However, this commenter may not have recognized that under §§ 192.243(b) and (c), operators must ensure that nondestructive testing is performed in accordance with written procedures by persons who have been properly trained and qualified. Sections 195.234(b) and (c) provide similar requirements for nondestructive testing of welds on hazardous liquid and carbon dioxide pipelines. RSPA believes these requirements are adequate to assure proper application of the appendix.

The Appendix of API Standard 1104 applies equally to girth welds in gas and liquid pipelines. This amendment is not mandatory, rather it provides pipeline operators an optional operating procedure. In view of the prior opportunity for public comment on use of the appendix for gas pipelines, the favorable response by public commenters and RSPA's advisory committee, and the fact that use of the appendix would not be mandatory, we believe that a further opportunity for public comment is unnecessary to allow use of the appendix under § 195.228(b). We feel this amendment is a logical outgrowth of the Notice and furthers our efforts to make parts 192 and 195 consistent wherever possible. This amendment will not have a substantial impact on the regulated community.

Thus, in accordance with 5 U.S.C. 553(b)(3)(B), we are amending § 195.228(b) to reference the appendix without further rulemaking notice. However, should any person be adversely affected by this decision or wish to change the final rule, that person may submit a petition for

reconsideration under RSPA's rulemaking procedures in 49 CFR 106.35.

The final rule provides that the appendix may be used only for girth welds to which the appendix applies. For example, as section A.1 of the appendix states, neither welds in pump stations nor welds used to connect fittings and valves are covered by the appendix. Also, the appendix applies only to girth welds between pipe of equal nominal wall thickness.

*Section 195.234 Welds: Nondestructive testing.*

Section 195.234(e) requires that "100 percent of each day's girth welds installed in * * * [certain] locations must be nondestructively tested 100 percent unless impracticable, in which case at least 90 percent must be tested." RSPA proposed to amend § 195.234(e) to clarify that "90 percent" pertains to the number of girth welds that must be tested over their entire circumference.

In addition, § 195.234(g) requires: "At pipeline tie-ins 100 percent of the girth welds must be nondestructively tested." RSPA proposed to clarify that this standard applies to tie-ins of replacement sections of pipeline.

The THLPSSC supported the proposed amendments, although one member thought part 195 should define the word "impracticable." We did not adopt this recommendation because the word is used in its ordinary dictionary sense.

Three operators and two pipeline-related associations commented on the proposed amendments. Three commenters agreed with the proposal, one suggested editing changes, and one made a related proposal discussed supra under the heading, "§ 195.228(b) Welds; standards of acceptability." Although we did not adopt all the editing suggestions, these comments helped us provide clarity to the final rule.

In addition, one commenter thought the proposed amendment of § 195.234(g) was unnecessary because § 195.200 already indicates that § 195.234(g) applies to replacement sections. Moreover, the commenter thought adding the proposed phrase to § 195.234(g) would create confusion over whether §§ 195.234(a) through (f) apply to replacement sections. While these observations have theoretical merit, in practice, some operators have failed to recognize that "pipeline tie-ins" include tie-ins of replacement sections. The clarifying phrase adds emphasis where it is apparently needed to assure compliance with the full extent of the rule. Section 195.234(g) is, therefore, adopted as proposed.

*Sections 195.246 Installation of pipe in a ditch and 195.248 Cover over buried pipeline.*

Section 195.246(b) is inconsistent with § 195.413(b)(3) for pipe in the Gulf of Mexico and its inlets (See § 195.2 Definitions) under water less than 15 feet deep but at least 12 feet deep, because § 195.246(b) permits the pipe to be without cover or to be above the seabed if properly protected. Such pipe is a "hazard to navigation" under the definition of that term in § 195.2, and must have the minimum cover required by § 195.413(b)(3). In addition, §§ 195.248(a) and (b) are inconsistent with § 195.413(b)(3) for pipe in the Gulf of Mexico and its inlets under water less than 12 feet deep. Section 195.248(a) allows pipe to be less than 12 inches below the seabed (i.e., a hazard to navigation). In certain instances, § 195.248(b) allows pipe to be without cover or less than 12 inches below the seabed. Neither condition is allowed under § 195.413(b)(3). In light of these inconsistences, RSPA proposed in the NPRM to amend §§ 195.246(b) and 195.248(a) and (b) to correct the problem.

Ten THLPSSC members favored the proposed changes (5 members did not vote). One of the members favoring the changes said it would make more sense to retain the existing regulation which operators have adhered to for years. In similar manner, two commenters and one pipeline-related organization agreed with the proposal. One commenter and two pipeline-related organizations disagreed and suggested that references to a depth of 15 feet in the rule be eliminated. RSPA proposed changes to §§ 195.246(b), 195.248(a) and 195.248(b) so these sections would conform with Public Law 101–599 (section 1, 104 Stat. 3038 (1990)) which requires burial of pipe where the subsurface is under 15 feet of water as measured from mean low water. Therefore, §§ 195.246(b), 195.248(a) and 195.248(b) are adopted as proposed in the NPRM.

*Section 195.262 Pumping equipment.*

Section 195.262(d) regulates the location of pumping equipment. The rule prohibits the installation of pumping equipment on property not under the operator's control. It also prohibits installation less than 50 feet from the pump station boundary. RSPA proposed to amend § 195.262(d) to clarify that these two restraints on location apply conjunctively not alternatively.

The THLPSSC members who voted on the proposed amendment supported it in concept, but 5 members recommended further editing of the rule for clarity. Although three of the five persons who commented on the proposal supported it as proposed, the other two commenters thought further clarifying changes were needed. In view of these comments and THLPSSC views, we have modified the final rule based on identical wording suggested by five THLPSSC members and one commenter.

*Section 195.304 Testing of components.*

Section 195.304(b) excludes from hydrostatic testing under part 195 any component that is the only item being replaced or added to a pipeline system if the component or a prototype was tested at the factory. RSPA proposed to amend § 195.304(b) to clarify that the excluded components do not include pipe.

The THLPSSC fully supported the proposed amendment. Of the six comments from the public on the proposal, a pipeline-related association and two operators agreed with it, while three operators suggested changes.

An operator suggested that instead of amending § 195.304(b), we should revise the definition of "component" to exclude pipe. We did not adopt this suggestion because the revision would affect every rule in part 195 that uses the term "component." Editing suggested by another operator was not adopted because it concerned matters not addressed in the NPRM.

One operator felt pipe should be excluded from hydrostatic testing under § 195.304(b) to the same extent as other components. The operator said that hydrostatically testing short sections of mill tested pipe is duplicative, costly, and not needed for safety. Although the NPRM did not propose to alter the existing requirement that replacement sections of pipe of any length must be hydrostatically tested to part 195 standards before operation, we do not agree with this commenter's contention. Normal pipe mill tests are not duplicative of part 195 tests, and are not a proven safe alternative to part 195 requirements. However, for short sections of replacement pipe, part 195 test requirements could be met anywhere, including, by prior arrangement with the operator, in the pipe mill. So if an operator wishes to avoid field testing of short replacement sections of pipe, it only needs to assure that the mill tests of those sections were done in accordance with part 195 test requirements.

*Section 195.406 Maximum operating pressure.*

The changes to § 195.406 are discussed supra under § 195.5.

*Section 195.412 Inspection of rights-of-way and crossings under navigable waters.*

Section 195.412(a) requires an operator, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, to inspect the surface conditions on or adjacent to each pipeline right-of-way. Because some surface condition activities that affect the safety and operation of pipelines are more visible from aerial patrols than from walking or driving the right-of-way, RSPA proposed that the section be changed to clarify that aerial patrols are an optional method of compliance. No comments were received regarding the change and the THLPSSC voted 10 to 0 in favor of the change (5 members did not vote). Accordingly, the change to § 195.412(a) is adopted as proposed.

Section (b) requires operators, at intervals not exceeding 5 years, to inspect each crossing under a navigable waterway (except offshore) to determine the condition of the crossing. The purpose of the inspection is to look for any damage, unanticipated loading, or loss of protection that could threaten the safety of the pipeline. We stated in the NPRM that bored crossings are usually so deep that there is little likelihood the pipeline could be affected by waterway-related events, such as scouring or anchor dragging. We proposed to add an exception to § 195.412(b) to cover bored crossings that are too deep to be subject to waterway-related damage.

The THLPSSC voted 10 to 0 in favor of the rule (5 members did not vote). However, a state pipeline agency suggested the existing regulation be retained. The agency stated that a pipeline operator cannot be 100 percent sure a bored crossing is so deep it cannot be affected as stated. RSPA received four additional comments, three of which expressed an opinion that the phrase "too deep to anticipate damage from waterway conditions or vessel traffic" is vague and inappropriate. The other commenter said the proposal is unduly restrictive and should be refocused from bored crossings to a more generic performance standard potentially including all crossings.

In view of the comments received, RSPA agrees with those who opined that "too deep to anticipate damage from waterway conditions or vessel traffic" is too vague. In the absence of a recognized standard on the subject, it is too speculative to judge when bored crossings are buried at a sufficient depth to be safe from damage by external forces. Therefore, it is in the interest of public safety that the current rule requiring inspection at intervals not exceeding 5 years be retained. Accordingly, the proposed change to § 195.412(b) is not adopted.

*Section 195.416 External Corrosion Control.*

Section 195.416(a) states that each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on each underground facility that is under cathodic protection to determine whether protection is adequate. RSPA is clarifying the rule to reduce any misunderstanding regarding what is meant by "underground." The word "underground" in this paragraph has meant any facility that is buried or in contact with the ground. This rule clarification will not change the burden on operators because RSPA compliance inspectors have consistently required any facility in contact with the ground to be cathodically protected.

RSPA received two comments regarding the change to § 195.416(a). One commenter recommended that offshore pipelines be excluded from annual testing requirements. RSPA believes there is no acceptable substitute for regular testing to determine if corrosion protection of all lines, both onshore and offshore, is adequate. Accordingly, "in contact with the ground or submerged" is added to the rule to assure that all underwater pipelines, both onshore and offshore, are included in the definition. The other commenter suggested requiring the testing of "carrier pipes" in casings. "Carrier pipes" are normally buried and subject to the rule. The THLPSSC voted 10 to 0 in favor of the proposed change (5 members did not vote). The revision to § 195.416(a) is adopted as modified.

Section 195.416(f) requires that any pipe found to be generally corroded so that the remaining wall thickness is less than the minimum thickness required by the pipe specification tolerances must either be replaced with coated pipe that meets the requirements of part 195 or, if the area is small, must be repaired. However, the operator need not replace generally corroded pipe if the operating pressure is reduced to be commensurate with the limits on operating pressure specified in § 195.406, based on the actual remaining wall thickness.

Section 195.416(g) states that if localized corrosion pitting is found to exist to a degree where leakage might result, the pipe must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness in the pits.

RSPA recognizes that paragraphs (f) and (g) do not provide guidance for an operator's use in determining the strength of the actual remaining wall thickness of corroded steel pipe. To provide such guidance, RSPA proposed amending § 195.416(h) to adopt the ASME Manual B31G procedure for determining the remaining strength of corroded steel pipe in existing pipelines. Application of the procedure was proposed to be in accordance with the limitations set out in the B31G Manual. The rule would provide guidance as to whether a corroded region (not penetrating the pipe wall) may be left in service; this option might require a reduction in maximum allowable operating pressure, but may be more economical than replacement or repair of the corroded pipe.

Ten THLPSSC members voted for the proposal (5 members did not vote).

Comments relative to § 195.416(h) were received from five commenters. One commenter said the proposal to change § 195.416(h) is inappropriate and should be redone to be consistent with § 192.485. Others stated that the proposal was unnecessarily restrictive because it did not allow the use of other proven industry developed methods for determining the remaining strength of corroded pipelines. The most noteworthy method mentioned was "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe (with RSTRENG disk)" developed by Battelle under the Pipeline Research Committee of the American Gas Association (AGA). (Project PR 3–805, December 1989, AGA catalog No. L51609). Project PR 3–805 was undertaken to devise a modified criterion that, while still assuring pipeline integrity, would eliminate as much as possible the excessive specifications embodied in the ASME B31G manual. The AGA modified criterion, using a complex analysis approach, can be carried out by means of a PC-based program called RSTRENG. The modified criterion can also be applied via tables or curves or a long-hand equation if a simplified analysis is preferred.

The addition of the modified criterion to the rule does not compromise safety because it merely accepts an established pipeline industry guideline, and does not impose new requirements on the operators. Accordingly, RSPA is amending § 195.416(h) to include the AGA/Battelle—A Modified Criterion for

Evaluating the Remaining Strength of Corroded Pipe (with the computer disk RSTRENG).

**Rulemaking Analyses**

*Impact Assessment*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034).

A Regulatory Evaluation has been prepared and is available in the docket. RSPA estimates the proposed changes to existing rules would result in an estimated savings of $1,534,000 per year for the hazardous liquid pipeline industry at no cost to the industry, and with no adverse effect on safety. As discussed above, these savings would come largely from the use of new technology, greater flexibility in constructing and operating pipelines, and the elimination of unnecessary requirements.

*Federalism Assessment*

RSPA has analyzed the proposed rules under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). The regulations have no substantial effects on the states, on the current federal-state relationship, or on the current distribution of power and responsibilities among the various levels of government. Thus, preparation of a federalism assessment is not warranted.

*Regulatory Flexibility Act*

RSPA criteria for small companies or entities are those with less than $1,000,000 in revenues and are independently owned and operated. Few of the companies subject to this rulemaking meet these criteria. Accordingly, based on the facts available concerning the impact of this proposal, I certify under Section 605 of the Regulatory Flexibility Act that this proposal would not have a significant economic impact on a substantial number of small entities. This rule applies to intrastate and interstate pipeline facilities used in the transportation of hazardous liquids or carbon dioxide.

*Paperwork Reduction Act*

The documentation for the information collection requirements for part 195 was submitted to the Office of Management and Budget (OMB) during the original rulemaking processes. Currently, regulations in part 195 are covered by OMB Control Numbers 2137–0047 (approved through May 31, 1994), 2137–0578 (approved through October 31, 1994) and 2137–0583 (approved through May 31, 1994). There are no new information collection requirements in this final rule.

**List of Subjects in 49 CFR Part 195**

Ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA is amending 49 CFR part 195 as follows:

## PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

**Authority:** 49 app. U.S.C. 2002 and 2015; and 49 CFR 1.53.

2. In § 195.1, the introductory text of paragraph (b) is republished, paragraph (b)(5) is revised, in paragraph (b)(6) a hyphen is added between the words "in" and "plant", and paragraphs (b)(7) and (b)(8) are revised to read as follows:

**§ 195.1 Applicability.**

* * * * *

(b) This part does not apply to—

* * * * *

(5) Transportation of hazardous liquid or carbon dioxide in offshore pipelines which are located upstream from the outlet flange of each facility where hydrocarbons or carbon dioxide are produced or where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

* * * * *

(7) Transportation of hazardous liquid or carbon dioxide—

(i) By vessel, aircraft, tank truck, tank car, or other non-pipeline mode of transportation; or

(ii) Through facilities located on the grounds of a materials transportation terminal that are used exclusively to transfer hazardous liquid or carbon dioxide between non-pipeline modes of transportation or between a non-pipeline mode and a pipeline, not including any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b); and

(8) Transportation of carbon dioxide downstream from the following point, as applicable:

(i) The inlet of a compressor used in the injection of carbon dioxide for oil recovery operations, or the point where recycled carbon dioxide enters the injection system, whichever is farther upstream; or

(ii) The connection of the first branch pipeline in the production field that transports carbon dioxide to injection wells or to headers or manifolds from which pipelines branch to injection wells.

* * * * *

3. In § 195.2, the introductory text is republished, definitions for Corrosive product, Flammable product, In-plant piping system, Petroleum, Petroleum product, and Toxic product are added in alphabetical order to read as follows:

**§ 195.2 Definitions.**

As used in this part—

* * * * *

*Corrosive product* means "corrosive material" as defined by § 173.136 Class 8–Definitions of this chapter.

* * * * *

*Flammable product* means "flammable liquid" as defined by § 173.120 Class 3–Definitions of this chapter.

* * * * *

*In-plant piping system* means piping that is located on the grounds of a plant and used to transfer hazardous liquid or carbon dioxide between plant facilities or between plant facilities and a pipeline or other mode of transportation, not including any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b).

* * * * *

*Petroleum* means crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas.

*Petroleum product* means flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds.

* * * * *

*Toxic product* means "poisonous material" as defined by § 173.132 Class 6, Division 6.1–Definitions of this chapter.

**§§ 195.2, 195.112, 195.212, 195.413 [Amended]**

4. In the list below, for each section indicated in the left column, the phrase indicated in the middle column is removed and the phrase indicated in the right column is added:

| Section | Remove | Add |
|---|---|---|
| 195.2, *Gathering line* | 8 inches or less in nominal diameter | 219.1 mm (8⅝ in) or less nominal outside diameter. |
| 195.112(c) | An outside diameter of 4 inches or more | A nominal outside diameter of 114.3 mm (4½ in) or more. |
| 195.212(b)(3)(ii) | The pipe is 12 inches or less in outside diameter. | The pipe is 323.8 mm (12¾ in) or less nominal outside diameter. |
| 195.413(a) | Except for gathering lines of 4-inch nominal diameter or smaller. | Except for gathering lines of 114.3 mm (4½ in) nominal outside diameter or smaller. |

5. In § 195.3, paragraph (a) is revised to read as follows:

**§ 195.3 Matter incorporated by reference.**

(a) Any document or portion thereof incorporated by reference in this part is included in this part as though it were printed in full. When only a portion of a document is referenced, then this part incorporates only that referenced portion of the document and the remainder is not incorporated. Applicable editions are listed in paragraph (c) of this section in parentheses following the title of the referenced material. Earlier editions listed in previous editions of this section may be used for components manufactured, designed, or installed in accordance with those earlier editions at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR for a listing of the earlier editions.

* * * * *

6. In § 195.3, paragraphs (b)(1) through (b)(5) are redesignated as paragraphs (b)(2) through (b)(6) and paragraph (b)(1) is added to read as follows:

**§ 195.3 Matter incorporated by reference.**

* * * * *

(b) * * *

(1) American Gas Association (AGA), 1515 Wilson Boulevard, Arlington, VA 22209.

* * * * *

7. In § 195.3, paragraphs (c)(2)(iii) and (c)(2)(iv) are redesignated as paragraphs (c)(2)(v) and (c)(2)(vi) and paragraphs (c)(2)(iii) and (c)(2)(iv) are added to read as follows:

**§ 195.3 Matter incorporated by reference.**

* * * * *

(c) * * *

(2) * * *

(iii) ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1989 with ASME/ANSI B31.8a–1990, B31.8b–1990, B31.8c–1992 Addenda and Special Errata issued July 6, 1990 and Special Errata (Second) issued February 28, 1991).

(iv) ASME/ANSI B31G, "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).

* * * * *

8. In § 195.3, paragraphs (c)(1) through (c)(4) are redesignated as paragraphs (c)(2) through (c)(5) and paragraph (c)(1) is added to read as follows:

**§ 195.3 Matter incorporated by reference.**

* * * * *

(c) * * *

(1) American Gas Association (AGA): AGA Pipeline Research Committee, Project PR–3–805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989). The RSTRENG program may be used for calculating remaining strength.

* * * * *

9. Section 195.5 is amended by revising paragraphs (a)(1) and (a)(4) to read as follows:

**§ 195.5 Conversion to service subject to this part.**

(a) * * *

(1) The design, construction, operation, and maintenance history of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in satisfactory condition for safe operation. If one or more of the variables necessary to verify the design pressure under § 195.106 or to perform the testing under paragraph (a)(4) of this section is unknown, the design pressure may be verified and the maximum operating pressure determined by—

(i) Testing the pipeline in accordance with ASME B31.8, Appendix N, to produce a stress equal to the yield strength; and

(ii) Applying, to not more than 80 percent of the first pressure that produces a yielding, the design factor F in § 195.106(a) and the appropriate factors in § 195.106(e).

* * * * *

(4) The pipeline must be tested in accordance with subpart E of this part to substantiate the maximum operating pressure permitted by § 195.406.

* * * * *

10. Section 195.50(f) is revised to read as follows:

**§ 195.50 Reporting accidents.**

* * * * *

(f) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000.

11. Section 195.52(a)(3) is revised to read as follows:

**§ 195.52 Telephonic notice of certain accidents.**

(a) * * *

(3) Caused estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000;

* * * * *

12. Section 195.106(b) is revised to read as follows:

**§ 195.106 Internal design pressure.**

* * * * *

(b) The yield strength to be used in determining the internal design pressure under paragraph (a) of this section is the specified minimum yield strength. If the specified minimum yield strength is not known, the yield strength to be used in the design formula is one of the following:

(1)(i) The yield strength determined by performing all of the tensile tests of API Specification 5L on randomly selected specimens with the following number of tests:

| Pipe size | No. of tests |
|---|---|
| Less than 168.3 mm (6⅝ in) nominal outside diameter. | One test for each 200 lengths. |
| 168.3 through 323.8 mm (6⅝ through 12¾ in) nominal outside diameter. | One test for each 100 lengths. |
| Larger than 323.8 mm (12¾ in) nominal outside diameter. | One test for each 50 lengths. |

(ii) If the average yield-tensile ratio exceeds 0.85, the yield strength shall be taken as 165,474 kPa (24,000 psi). If the average yield-tensile ratio is 0.85 or less,

the yield strength of the pipe is taken as the lower of the following:

(A) Eighty percent of the average yield strength determined by the tensile tests.

(B) The lowest yield strength determined by the tensile tests.

(2) If the pipe is not tensile tested as provided in paragraph (b) of this section, the yield strength shall be taken as 165,474 kPa (24,000 psi).

* * * * *

13. In § 195.106(c), the last sentence is revised to read as follows:

**§ 195.106 Internal design pressure.**

* * * * *

(c) * * * However, the nominal wall thickness may not be more than 1.14 times the smallest measurement taken on pipe that is less than 508 mm (20 in) nominal outside diameter, nor more than 1.11 times the smallest measurement taken on pipe that is 508 mm (20 in) or more in nominal outside diameter.

* * * * *

14. In § 195.204, the last sentence is revised to read as follows:

**§ 195.204 Inspection—general.**

* * * No person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected.

15. Section 195.228(b) is revised to read as follows:

**§ 195.228 Welds and welding inspection: Standards of acceptability.**

* * * * *

(b) The acceptability of a weld is determined according to the standards in section 6 of API Standard 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if the Appendix to API Standard 1104 applies to the weld, the acceptability of the weld may be determined under that appendix.

16. Section 195.234 is amended by revising the introductory text of paragraph (e) and by revising paragraph (g) to read as follows:

**§ 195.234 Welds: Nondestructive testing.**

* * * * *

(e) All girth welds installed each day in the following locations must be nondestructively tested over their entire circumference, except that when nondestructive testing is impracticable for a girth weld, it need not be tested if the number of girth welds for which testing is impracticable does not exceed 10 percent of the girth welds installed that day:

* * * * *

(g) At pipeline tie-ins, including tie-ins of replacement sections, 100 percent of the girth welds must be nondestructively tested.

17. Section 195.246 is amended by revising paragraph (b) to read as follows:

**§ 195.246 Installation of pipe in a ditch.**

* * * * *

(b) Except for pipe in the Gulf of Mexico and its inlets, all offshore pipe in water at least 3.7 m 12-ft-deep but not more than 61 m (200 ft) deep, as measured from the mean low tide, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means.

18. Section 195.248 is amended by revising in the first column of the table in paragraph (a) the language "Other offshore areas under water less than 12-ft-deep as measured from the mean low tide" to read "Gulf of Mexico and its inlets and other offshore areas under water less than 12-ft-deep as measured from the mean low tide" and by revising the introductory text of paragraph (b) to read as follows:

**§ 195.248 Cover over buried pipeline.**

* * * * *

(b) Except for the Gulf of Mexico and its inlets, less cover than the minimum required by paragraph (a) of this section and § 195.210 may be used if—

* * * * *

19. Section 195.262(d) is revised to read as follows:

**§ 195.262 Pumping equipment.**

* * * * *

(d) Except for offshore pipelines, pumping equipment must be installed on property that is under the control of the operator and at least 15.2 m (50 ft) from the boundary of the pump station.

* * * * *

20. The introductory text of § 195.304(b) is revised to read as follows:

**§ 195.304 Testing of components.**

* * * * *

(b) A component, other than pipe, that is the only item being replaced or added to the pipeline system need not be hydrostatically tested under paragraph (a) of this section if the manufacturer certifies that either—

* * * * *

21. Section 195.406 is amended by republishing the introductory text of paragraph (a) and revising paragraph (a)(1) to read as follows:

**§ 195.406 Maximum operating pressure.**

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

(1) The internal design pressure of the pipe determined in accordance with § 195.106. However, for steel pipe in pipelines being converted under § 195.5, if one or more factors of the design formula (§ 195.106) are unknown, one of the following pressures is to be used as design pressure:

(i) Eighty percent of the first test pressure that produces yield under section N5.0 of Appendix N of ASME B31.8, reduced by the appropriate factors in §§ 195.106 (a) and (e); or

(ii) If the pipe is 323.8 mm (12¾ in) or less outside diameter and is not tested to yield under this paragraph, 1379 kPa (200 psig).

* * * * *

22. Section 195.412(a) is revised to read as follows:

**§ 195.412 Inspection of rights-of-way and crossings under navigable waters.**

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

* * * * *

23. Section 195.416 is amended by revising paragraph (a), redesignating paragraph (h) as paragraph (i) and adding a new paragraph (h) to read as follows:

**§ 195.416 External corrosion control.**

(a) Each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on each buried, in contact with the ground, or submerged pipeline facility in its pipeline system that is under cathodic protection to determine whether the protection is adequate.

* * * * *

(h) The strength of the pipe, based on actual remaining wall thickness, for paragraphs (f) and (g) of this section may be determined by the procedure in ASME B31G manual for Determining the Remaining Strength of Corroded Pipelines or by the procedure developed by AGA/Battelle—A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe (with RSTRENG disk). Application of the procedure in the ASME B31G manual or the AGA/Battelle Modified Criterion is applicable to corroded regions (not penetrating the pipe wall) in existing steel pipelines in accordance with limitations set out in the respective procedures.

* * * * *

Issued in Washington, DC, on June 9, 1994.

**Ana Sol Gutiérrez,**

*Acting Administrator, Research and Special Programs Administration.*

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Part VIII

# Department of Agriculture

## Agricultural Marketing Service

7 CFR Part 1208
Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order; Proposed Rule

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1208**

**[FV-94-708PR]**

**RIN 0581-AB20**

## Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Agriculture (Department) is seeking comments on a proposal for a national, industry-funded promotion and information program for fresh cut flowers and fresh cut greens (cut flowers and greens). An order for the proposed program—the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order—was submitted to the Department by the Promoflor Organizing Group, Inc. The Department is also seeking comments on proposals submitted by the Florists' Transworld Delivery Association and the Produce Marketing Association which cover only one portion of the proposed order. Under the proposed order, handlers would pay an assessment based on their gross sales of cut flowers and greens, regardless of the country of origin, to the proposed National PromoFlor Council. Composed of handlers, growers, importers, and retailers, the Council would use the assessments collected to conduct a generic promotion and information program to maintain, expand, and develop markets for cut flowers and greens.

**DATES:** Comments must be received by August 29, 1994.

**ADDRESSES:** Interested persons are invited to submit written comments concerning the proposed order to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Agricultural Marketing Service, USDA.

**FOR FURTHER INFORMATION CONTACT:** Arthur Pease, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456, telephone (202) 720-6930.

**SUPPLEMENTARY INFORMATION:** This proposed order is issued under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 [Pub. L. 103-190] approved December 14, 1993, hereinafter referred to as the Act.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866, and the Office of Management and Budget has determined that it is a "significant regulatory action."

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 8 of the Act, after an order is implemented, a person subject to the order may file a petition with the Secretary stating that the order or any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

### Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Only those wholesale handlers, retail distribution centers, producers, and importers who have annual sales of $750,000 or more of cut flowers and greens and sell those products to exempt handlers, retailers, or consumers would be considered to be qualified handlers and assessed under the order. There are approximately 900 wholesalers, 150 importers, and 200 domestic producers who would be qualified handlers.

The majority of these qualified handlers would be classified as small businesses. As defined by the Small Business Administration [13 CFR 121.601] small agricultural service firms, which would include the qualified handlers who would be required to pay assessments under the order, have been defined as those having annual receipts of less than $5,000,000.

Statistics reported by the National Agricultural Statistics Service show that 1993 sales at wholesale of domestic cut flowers and greens total approximately $535 million while the value of imports during 1993 was approximately $382 million. The leading States in the United States producing cut flowers and greens, by wholesale value, are California, which produces approximately 60 percent of the domestic crop, followed by Florida, Colorado, Washington, New York, Hawaii, and Pennsylvania. Major countries exporting cut flowers and greens into the United States, by value, are Colombia, which accounts for approximately 60 percent, followed by The Netherlands, Mexico, and Costa Rica.

During the first three years the order is in effect, the rate of assessment may not exceed 0.5 percent of the gross sales of cut flowers and greens. After the order has been in effect for three years, the assessment rate may be increased or decreased by no more that 0.25 percent each year when recommended by two-thirds of the members of the National PromoFlor Council (Council) and approved by the Secretary. However, at no time may the assessment rate exceed 1.0 percent of gross sales of cut flowers and greens. Notice and comment rulemaking would be required to change the assessment rate.

Although the maximum assessment collection is expected to total about $10 million annually, the economic impact of a 1.0 percent or less assessment on each qualified handler would not be significant.

While the proposed order would impose certain recordkeeping requirements on qualified handlers, information required under the proposed order could be compiled from records currently maintained. Thus, any

added burden resulting from increased recordkeeping would not be significant when compared to the benefits that should accrue to such businesses. The proposed order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

Although the order would impose some additional costs and requirements on qualified handlers, it is anticipated that the program under the proposed order would help to increase the demand for cut flowers and greens. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting all segments of the floral industry. Accordingly, the Administrator of the AMS has determined that the provisions of the proposed order would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35] the forms, reporting, and recordkeeping requirements included in this action have been submitted for approval to the Office of Management and Budget (OMB). Information collection requirements that are included in this proposal include:

(1) *A periodic report by each qualified handler who handles cut flowers and greens.* The estimated maximum number of respondents is 1,250, each submitting an average of 12 responses per year, with an estimated average reporting burden of 10 minutes per response.

(2) *An application requesting postponement of assessment payments.* The estimated maximum number of respondents is 25, each submitting an average of 4 responses per year, with an estimated average reporting burden of 20 minutes per response.

(3) *A refund application form for persons who desire a refund of their assessments.* The estimated maximum number of respondents is 210, each submitting 1 response prior to the initial referendum, or an annual average of 70 respondents, with an estimated average reporting burden of 15 minutes per response.

(4) *An exemption application for wholesale handlers, retail distribution centers, producers, and importers of cut flowers and greens with gross annual sales under $750,000 and would be exempt from assessments and recordkeeping requirements.* The estimated number of respondents for this form is 500, each submitting one response per year, with an estimated average burden of 15 minutes per response.

(5) *A referendum ballot to be used to determine whether qualified handlers favor continuance of the order.* The estimated number of respondents completing this ballot would be 1,250, each submitting one response approximately every 3 years, or an annual average of 417 respondents, with an estimated average reporting burden of 15 minutes per response.

(6) *A nominee background statement form for Council member and alternate member nominees.* The estimated number of respondents for this form is 50 for the initial nominations to the Council and approximately 17 respondents annually thereafter. Each respondent would submit one response per year, with an estimated average reporting burden of 30 minutes per response.

(7) *A requirement to maintain records sufficient to verify reports submitted under the order.* The estimated maximum number of recordkeepers necessary to comply with this requirement is 1,750 each of whom would have an estimated annual burden of 15 minutes.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

**Background**

The Act authorizes the Secretary of Agriculture (Secretary) to establish a national cut flowers and greens promotion and consumer information program. The program would be funded by an assessment levied on qualified handlers not to exceed 1 percent of their gross sales of cut flowers and greens.

The Act provides for the submission of proposals for a cut flowers and greens promotion and consumer information order by industry organizations or any other interested person affected by the Act. The Act requires that such a proposed order provide for the establishment of a National PromoFlor Council. The Council would be composed of 25 voting members: 14 members representing qualified wholesale handlers of domestic and imported cut flowers and greens; 3 members representing producers who are qualified handlers of cut flowers and greens; 3 members representing importers who are qualified handlers of cut flowers and greens; 3 members representing traditional retailers of cut flowers and greens; and 2 members representing persons who produce cut flowers and greens. Each member shall have an alternate.

The Department issued a news release on February 17, 1994, requesting proposals for an initial order or portions of an initial order.

**Proposal I**

An entire proposed order was submitted by the PromoFlor Organizing Group, Inc. (PromoFlor). PromoFlor is an industry group created and sponsored by 68 floral industry organizations and more than 700 floral businesses solely for the purpose of developing and implementing a promotion and consumer information order for cut flowers and greens. PromoFlor represents a substantial number of industry members who would be assessed under the proposed order. Once the order is established, PromoFlor would no longer exist.

The Department is publishing PromoFlor's proposed order as Proposal I. The Department has modified PromoFlor's proposed text (1) to make it consistent with the Act and other similar national research and promotion programs supervised by the Department, (2) to simplify the language and format of some provisions, and (3) to add certain sections necessary for proper administration of the Order by the Department.

The proposed order submitted by PromoFlor is summarized as follows:

Sections 1208.1–1208.22 of the proposed order define certain terms, such as floral products, qualified handler, producer, and retailer, which are used in the proposed order.

Sections 1208.30–1208.37 include provisions relating to the establishment, membership, nomination procedures, appointment, terms of office, and reimbursement of members of the Council. Also PromoFlor would be designated as an election committee for the initial nomination of members to the Council. After the Council is appointed, the Council would be the election committee.

Sections 1208.40–1208.43 include powers and duties of the Council, which would be the body organized to administer the order through the implementation of plans, projects, budgets, and contracts to promote and disseminate information about cut flowers and greens, under the supervision of the Secretary. Further, the Council would be authorized to incur expenses necessary for the performance of its duties.

Sections 1208.50–1208.57 would authorize the collection of assessments, specify who pays them and how, set

forth procedures for granting a postponement of the payment of an assessment for any qualified handler who is financially unable to pay such assessment, set forth procedures for the handling of a one-time refund should the order fail to be approved in referendum, authorize the Council to make determinations as to who are qualified handlers and who are exempt handlers, and for establishing an operating monetary reserve.

The initial assessment rate would be 0.5 percent of a qualified handler's gross sales during the first three years the order is in effect. Thereafter, the rate may be increased or decreased by no more than 0.25 percent per year. A uniform factor would be used for determining the assessment due on non-sale transfers to retailers and sales by importers who are qualified handlers directly to consumers. Another uniform factor would be used for determining the assessment due on sales directly to consumers by producers who are qualified handlers. Sales of cut flowers and greens to export markets would be exempt from assessment.

The assessment sections also outline the procedures to be followed by qualified handlers for remitting assessments; establish a 1.5 percent per month interest charge for unpaid or late assessments; and provide for refunds of assessments paid if the program does not continue after the initial referendum.

Sections 1208.60–1208.62 authorize the Secretary to suspend or terminate the order when deemed appropriate, and prescribes proceedings after suspension or termination.

Sections 1208.70–1208.72 concern reporting and recordkeeping requirements for persons subject to the order and protect the confidentiality of information obtained from such books, records, or reports.

Sections 1208.80–1208.85 are miscellaneous provisions including the provisions involving authority of the Secretary; personal liability of Council members and employees; separability of order provisions; handling of intellectual property, such as patents, arising from funds collected by the Council; and amendments to the order.

In addition to the proposal from PromoFlor, the Department received proposals addressing the nomination of the Council's retailer members from Florists' Transworld Delivery Association (FTD) (see Proposal II) and the Produce Marketing Association (PMA) (see Proposal III).

**Proposal II**

FTD's proposal specifies that one of the three retailer members be appointed from nominations submitted by the American Floral Marketing Council (AFMC) in accordance with the Act, that one retailer member be appointed from nominations submitted by FTD, and that one retailer member be appointed from nominations submitted by a coalition of traditional retail florist organizations. The FTD proposal also defines "traditional retail florist organization" as an organization having membership exceeding 1,000 of which 75 percent would be traditional cut flowers and greens retailers and such organization spends a portion of its revenue on marketing cut flowers and greens. The FTD proposal defines "traditional cut flowers and greens retailer" as small business establishments that operate from owned or leased premises and derive 40 percent of their total volume of sales from cut flowers and greens. This definition would not allow for mass-market retailers such as supermarket chains to be eligible to nominate candidates as members on the Council. The FTD proposal further states that no traditional retail florist organization, including AFMC, would be eligible to nominate members for more than one of the three retailer member positions. It is FTD's position that it is the largest traditional retail florist organization in the industry and that it should be entitled to one member and alternate on the Council.

**Proposal III**

The Produce Marketing Association (PMA) also submitted proposed definitions of "traditional retailer" and "traditional retail florist organization" which would be used in determining eligibility to nominate retailer members for the Council. PMA is the national trade association that represents the mass-market floral industry though its division, the Floral Marketing Association. It is PMA's position that the definition of the term "traditional" should be very broad and include any retailer whose primary business is the sale of floral products, including cut flowers and greens or has a specific department dedicated to the sale of floral products including cut flowers and greens. Also, PMA recommended that nominations be limited to national organizations. Further, PMA is in favor of keeping the two retailer seats that were not designated for AFMC open to as large a segment of the floral industry as possible.

In addition to these proposals, the Department has received letters from several other floral industry groups regarding qualifications for the retailer member seats on the Council. They include American Floral Services, Inc., Redbook Floral Services, Teleflora, and Wholesale Florists and Florist Suppliers of America. Copies of these letters will be available for public inspection in addition to the comments received in response to this proposed rule.

The Department will analyze all written views received to date as well as written comments on the three proposals published below before issuing a final order.

**List of Subjects in 7 CFR Part 1208**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Cut flowers, Cut greens, Promotion, Reporting and recordkeeping requirements.

The proposals set forth below have not received the approval of the Secretary.

It is hereby proposed that chapter XI of Title 7 of the Code of Federal Regulations be amended as follows:

**Proposal I**

1. Part 1208 is proposed to be added to read as follows:

## PART 1208—FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

### Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order

**Definitions**

Sec.



**Establishment of the Council**

**Authority:** 7 U.S.C. 1601–6814.

## Definitions

### § 1208.1 Act.

*Act* means the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, Pub. L. 103–190, 7 U.S.C. §§ 6801 *et seq.*, and any amendments thereto.

### § 1208.2 Consumer information.

*Consumer information* means any action or program that provides information to consumers and other persons on appropriate uses for cut flowers and greens under varied circumstances, or on the care and handling of cut flowers and greens.

### § 1208.3 Council.

*Council* means the Fresh Cut Flowers and Fresh Cut Greens Promotion Council established pursuant to § 1208.30 of this subpart and which shall be referred to as the National PromoFlor Council.

### § 1208.4 Cut flowers.

*Cut flowers* include all flowers cut from growing plants that are used as fresh-cut flowers and that are produced under cover or in field operations, but not including foliage plants, floral supplies, or flowering plants.

### § 1208.5 Cut greens.

*Cut greens* include all cultivated or noncultivated decorative foliage cut from growing plants that are used as fresh-cut decorative foliage (except Christmas trees) and that are produced under cover or in field operations, but not including foliage plants, floral supplies, or flowering plants.

### § 1208.6 Cut flowers and greens.

The term *cut flowers and greens* means either cut flowers or cut greens, even though the cut flowers or cut greens are sold as separate commodities by a person in the floral marketing system, or cut flowers and cut greens collectively when both commodities are sold by a person in the floral marketing system.

### § 1208.7 Department.

*Department* means the United States Department of Agriculture.

### § 1208.8 Exempt handler.

*Exempt handler* means a person who would otherwise be considered to be a qualified handler except that the person's annual sales of cut flowers and greens to retailers and other exempt handlers is less than $750,000.

### § 1208.9 Fiscal year.

*Fiscal year* means a 12-month period recommended by the Council and approved by the Secretary.

### § 1208.10 Gross sales price.

*Gross sales price* means the total amount of the transaction in a sale of cut flowers and greens from a handler to a retailer or exempt handler.

### § 1208.11 Order.

*Order* means this subpart.

### § 1208.12 Part and subpart.

*Part* means the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order and all rules and regulations issued pursuant to the Act. The order itself shall be a *subpart* of such part.

### § 1208.13 Person.

*Person* means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, society, cooperative, or other legal entity.

### § 1208.14 Promotion.

*Promotion* means any action determined by the Secretary to advance the image, desirability, or marketability of cut flowers and greens, including paid advertising.

### § 1208.15 Producer that is a qualified handler.

*Producer that is a qualified handler* means an entity that is engaged: In the domestic production, for sale in commerce, of cut flowers and greens and that owns or shares in the ownership and risk of loss of the cut flowers and greens; or as a first processor of noncultivated greens, in receiving the greens from a person who gathers the greens for handling; and is subject to assessments as a qualified handler under the order.

### § 1208.16 Qualified handler.

*Qualified handler* means a person operating in the cut flowers and greens marketing system that sells domestic or imported cut flowers and greens to retailers and exempt handlers and whose annual sales of cut flowers and greens to retailers and exempt handlers are $750,000 or more. The term does not include a person who only physically transports or delivers cut flowers and greens. However, the term does include, but is not limited to, the following entities when they have the requisite volume of sales of cut flowers and greens as provided in §§ 1208.50 and 1208.57:

(a) A qualified wholesale handler—a person in business as a floral wholesale jobber (*i.e.*, a person who conducts a commission or other wholesale business in buying and selling cut flowers and greens) or as a floral supplier (*i.e.*, a person engaged in acquiring cut flowers and greens to be manufactured into floral articles or otherwise processed for resale) if the annual value of the qualified wholesale handlers sale of cut flowers and greens to retailers and exempt handlers is more than $750,000;

(b) A manufacturer of bouquets for sale to retailers if the cut flowers and greens used in such articles are a substantial portion of the value of the manufactured floral articles;

(c) A manufacturer of floral articles (other than bouquets) for sale to retailers if the cut flowers and greens used in such articles are a substantial portion of the value of the manufactured floral articles;

(d) An auction house that clears the sale of cut flowers and greens to retailers and exempt handlers through a central clearinghouse;

(e) A distribution center that is owned or controlled by a retailer if the

predominant retail business activity of the retailer is floral sales. In addition to sales, non-sale transfers of cut flowers and greens by the distribution center to retail outlets, shall be counted for the purpose of applying the $750,000 minimum volume rule to the center and the value of such transfers shall be determined as provided in §§ 1208.50 and 1208.57;

(f) An importer that is a qualified handler—a person whose principal activity is the importation of cut flowers and greens into the United States (either directly or as an agent, broker, or consignee of any person or nation that produces or handles cut flowers and greens outside of the United States for sale in the United States) and who sells such cut flowers and greens to retailers and exempt handlers or directly to consumers, if the annual combined value of such sales determined as provided in §§ 1208.50 and 1208.57 totals $750,000 or more;

(g) A producer that is a qualified handler, *e.g.*, a person who produces cut flowers and greens and who sells such cut flowers and greens directly to retailers or consumers if the annual combined value of such sales determined as provided in §§ 1208.50 and 1208.57 totals $750,000 or more.

**§ 1208.17 Research.**

*Research* means market research and studies limited to the support of advertising, market development, and other promotion efforts and consumer information efforts relating to cut flowers and greens, including educational activities.

**§ 1208.18 Retailer.**

*Retailer* means a person that sells cut flowers and greens to consumers. The term includes:

(a) All retail outlets that sell cut flowers and greens to consumers including retail florists, supermarkets, and other mass market retail outlets that sell such flowers or greens, except distribution centers defined in § 1208.16(e) (*i.e.*, centers that are owned or controlled by a retailer if the predominant retail business activity of the retailer is floral sales and whose sales and non-sale transfers of cut flowers and greens to retail outlets exceeds $750,000, determined as provided in this subpart) even though such centers may also make direct sales to consumers.

(b) Distribution centers owned or controlled by a retailer (or distribution centers owned or controlled cooperatively by a group of such retailers) when the predominant business activity of the retailer or retailers is not the sale of cut flowers and greens to consumers; and

(c) Distribution centers independently owned but operated primarily to provide food products to retail stores.

**§ 1208.19 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

**§ 1208.20 Substantial portion.**

*Substantial portion* means that portion of the total value of manufactured floral articles that represents the value of the cut flowers and greens in such articles (expressed as a percentage factor) which the Council, with the approval of the Secretary, finds to be great enough to cause such articles to be classed as cut flowers and greens under this subpart.

**§ 1208.21 State.**

*State* means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (until such time as the Compact of Free Association is ratified).

**§ 1208.22 United States.**

United States means the States collectively.

**Establishment of the Council**

**§ 1208.30 Establishment and membership of the Council.**

(a) A Fresh Cut Flowers and Fresh Cut Greens Promotion Council which shall be named the National PromoFlor Council is hereby established to administer the terms and provisions of this subpart. The Council shall consist of 25 members nominated by the floral industry and appointed by the Secretary, as provided in this subpart, each of whom shall have an alternate nominated and appointed in the same manner as members of the Council are nominated and appointed.

(b) The membership of the Council shall be divided as follows:

(1) 14 members and their alternates shall represent qualified wholesale handlers of domestic or imported cut flowers and greens;

(2) Three members and their alternates shall represent producers that are qualified handlers of cut flowers and greens;

(3) Three members and their alternates shall represent importers that are qualified handlers of cut flowers and greens;

(4) Three members and their alternates shall represent traditional retailers of cut flowers and greens;

(5) One member and alternate shall represent persons who produce cut flowers and greens in locations east of the Mississippi River; and

(6) One member and alternate shall represent persons who produce cut flowers and greens in locations west of the Mississippi River.

**§ 1208.31 Election and appointment of members and alternates other than retailers.**

(a) PromoFlor Organizing Group, Inc., an industry organizing committee, is designated as an election committee for the purpose of receiving the names of individuals who are engaged in the industry and who are prepared to serve as members (other than retailer members) of the Council or as alternates if elected as nominees and if selected by the Secretary for such positions.

(b) The election committee shall, within five (5) days of the issuance of this subpart and with the assistance of the Secretary, request the submission of names of candidates for nominees from those segments of the industry for which nominees must be selected by an election process. These segments are: qualified wholesale handlers; importers who are qualified handlers; producers of cut flowers and greens who are qualified handlers; and producers of cut flowers and greens without regard to whether they are qualified handlers. Notification of the industry of the selection process by the election committee shall be by a news release to industry publications and where appropriate, newspapers of general circulation. In order to be assured of a place on the slate of candidates, the names of candidates must be received by the election committee not later than fifteen (15) days after the date of the first such news release.

(c) Names of candidates shall be sought for the following seats on the Council:

(1) 14 members and their respective alternates representing qualified wholesale handlers of domestic or imported cut flowers and greens. Two such members and their respective alternates for the United States at large and two such members and their respective alternates for each of the following regions:

(i) *Region 1 (Pacific):* Alaska, California, Hawaii, Oregon, Washington, the Commonwealth of the Northern

Mariana Islands, Guam, the Federated States of Micronesia, American Samoa, the Republic of the Marshall Islands, and the Republic of Palau.

(ii) *Region 2 (Inter-Mountain):* Arizona, Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

(iii) *Region 3 (North Central):* Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, and Wisconsin.

(iv) *Region 4 (Northeast):* Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

(v) *Region 5 (Mid-Atlantic):* Delaware, District of Columbia, Kentucky, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia.

(vi) *Region 6 (Southeast):* Alabama, Florida, Georgia, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the United States Virgin Islands.

(2) Three at-large members and their alternates representing importers that are qualified handlers of cut flowers and greens.

(3) Three members and their alternates representing producers of cut flowers and greens that are qualified handlers of cut flowers and greens. There shall be one such member and alternate from each of the following production areas:

(i) *Production Area 1:* California.

(ii) *Production Area 2:* Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming.

(iii) *Production Area 3:* Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

(4) Two members and their respective alternates representing persons who produce cut flowers and greens in locations east and west of the Mississippi River, respectively. There shall be one such member and alternate from the east, and one such member and alternate from the west.

(d) Names of candidates for nominees may be submitted by state, regional (either regions within a state or regions that include more than one state as appropriate), or national industry organizations, provided that the organization has members engaged in the appropriate segment of the industry and from the region or production area if applicable, or by petition. The names of candidates submitted by an industry organization shall be accompanied by statements showing the role of the organization in the industry and general information about the membership it represents. No industry organization may submit more than two names of candidates for each seat on the Council. The names of candidates submitted by petition shall be accompanied by petitions in support of such candidate, signed by not less than ten (10) persons engaged in the appropriate segment of the industry and from the region or production area, if applicable, that the candidate will represent if ultimately selected by the Secretary. Submission of names of all candidates, whether by organizations or by petition, must include a certification by the candidate that the candidate is within the segment of the industry and the region or production area for which the candidate is nominated and, if elected as a nominee and if subsequently appointed by the Secretary, the candidate is willing to serve as a member or alternate member on the Council.

(e) The names of candidates so submitted shall be reviewed and organized by the election committee for the preparation of slates of candidates. Separate slates for each segment and region of the industry shall be prepared as appropriate. There must be at least four candidates for each position on the Council for which nominees must be selected by election. No candidate may seek nomination for more than one seat on the Council. In a case where a candidate is nominated more than once, the election committee will decide which place on the ballot the candidate's name will appear. If insufficient candidates have been proposed for any seat, the election committee shall select additional candidates as required. The slates shall be prepared not later than 5 days after the date for receiving names of candidates by the election committee.

(f) After all candidates have been listed on the slates of candidates, the slates shall be supplied to an independent certified public accounting (CPA) firm contracted by the election committee. The ballots shall be printed and distributed by the CPA firm by U.S. mail, or other means selected by the election committee, not later than 15 days after the slates of candidates are received from the election committee. To the maximum extent practicable, ballots will be distributed to all persons that will be assessed under this subpart in the segment of the industry, the region, or in the United States as a whole, as applicable, to which the ballot pertains. Ballots that are not returned to the CPA firm within 20 days shall be declared invalid. The votes for each candidate on the ballots shall be tallied by the CPA firm at the end of the voting period and the results furnished to the election committee. The election committee shall issue a news release setting forth the names of the candidates and the number of votes received by each candidate within 5 days after the voting period has ended. Those candidates on each of the ballots who rank first, second, third, and fourth in the number of votes received for each seat on the Council shall be declared the nominees for each such seat.

(g) The names of those declared the nominees for each of the seats on the Council representing the various segments of the industry and the designated regions or production areas, where applicable, shall be submitted to the Secretary in order of rank with the number of votes received by each such nominee shown after the nominee's name and with the recommendation that the nominee with the most votes for each of such seats be declared the member of the Council and the nominee with the next greatest number of votes for each of such seats be declared the alternate member. The Secretary shall then appoint from the nominees so provided the members and their alternates for each of such seats on the Council.

(h) Subsequent elections of nominees and appointment of members and alternates as terms expire shall be conducted by the Council or the Council staff in the manner similar to that described above except that the Council shall act as the election committee for which provision is made in this section. The nomination and election process shall be completed at least 90 days before the beginning of each nominee's term of office.

(i) The Council shall periodically review the cut flower and greens market in the United States for changes in the geographic distribution of importing, producing, and marketing facilities and shall, if appropriate, recommend changes in the regions and production areas described in this section to the Secretary for approval.

**§ 1208.32 Designation and appointment of retailer members and alternates.**

(a) Four nominations for one of the traditional retailer members of the Council and that member's alternate shall be received from the American

Floral Marketing Council (AFMC) or a successor entity.

(b) Four nominations for each of two members of the Council and their alternates shall be received from national traditional retail florist organizations other than the AFMC. In order to be eligible to submit nominations for members and alternates to serve on the Council, such organizations must certify that their activities and membership are nationwide in scope. No more than four nominations for each seat may be submitted by each organization.

(c) The Secretary shall choose from among the names submitted by the AFMC the names of the member and alternate who shall fill the seat on the Council representing the AFMC. The Secretary shall choose from among the names submitted by national traditional retail florist organizations other than the AFMC the two members and their alternates who shall fill the other two seats on the Council representing traditional retailers.

**§ 1208.33 Failure to nominate.**

If any group of qualified wholesale handlers, producers that are qualified handlers; importers that are qualified handlers, persons who produce cut flowers and greens, or traditional retailers fails to nominate individuals for appointments as members or alternates of the Council, the Secretary may appoint individual(s) from the appropriate segment(s), region(s), or area(s) of the industry to fill the vacancy or vacancies. The failure of any nominee to promptly indicate the nominee's willingness to serve in such manner as may be prescribed by the Secretary shall be treated as a failure to nominate.

**§ 1208.34 Term of office and compensation.**

(a) The term of office for each member or alternate member of the Council shall be three years. As provided in the Act, the initial appointments on the Council shall be as follows: nine of the member appointments shall be for two-year terms, eight of the appointments shall be for three-year terms, and eight of the appointments shall be for four-year terms. Alternate members shall have the same terms of office as their respective members. The term of office on the initial Council shall be apportioned as follows:

(1) One of the two qualified wholesale handler members representing each of Regions 1, 2, 4, and 5 shall serve two-year terms of office; one of the two qualified wholesale handler members representing each of Regions 3, 4, and 6 shall serve three-year terms of office; and one of the two qualified wholesale handler members representing each of Regions 1, 2, 3, 5, and 6 shall serve four-year terms of office.

(2) The two qualified wholesale handler members representing the United States at large shall serve terms of office of two years and three years respectively.

(3) The members representing producers that are qualified handlers from Production Areas 1 and 2 shall serve three-year terms of office, and the member representing producers that are qualified handlers from Production Area 3 shall serve a four-year term of office.

(4) The three members representing importers that are qualified handlers shall serve terms of office of two, three, and four years respectively.

(5) The members representing producers that produce cut flowers and greens east and west of the Mississippi River shall each serve two-year terms of office.

(6) The member representing retailers nominated by the AFMC shall serve a two-year term of office. The two members representing retailers not nominated by the AFMC shall serve three-year and four-year terms of office respectively.

(b) No member of the Council may serve more than two consecutive terms of three years, except that any member serving an initial term of four years or two years may serve an additional term of three years.

(c) The term of office for the initial Council shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count towards the initial term of office. Should the term of office of the initial Council begin later than January 1, all time until the following January will count toward the terms of office set out in this section. In subsequent years, the term of office shall begin on January 1 or such other period which may be recommended by the Council and approved by the Secretary.

(d) Members of the Council shall serve without compensation, but each member shall be reimbursed for the expenses incurred in performing duties as a member of the Council.

**§ 1208.35 Vacancies.**

(a) Should any Council member position become vacant, the alternate of that member shall automatically assume the position of said member. Candidates for the vacant alternate member position which resulted from the alternate filling the vacant member position shall be nominated in the manner specified in §§ 1208.31 and 1208.32. *Provided*, That a vacancy will not be required to be filled if the unexpired term is less than six months.

(b) Should the positions of both a member and such member's alternate become vacant, Candidates to serve the unexpired terms of office for such member and alternate shall be nominated in the manner specified in §§ 1208.31 and 1208.32. *Provided*, That a vacancy will not be required to be filled if the unexpired term is less than six months.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, if a member of the Council fails to submit reports and remit assessments required under this part, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds that the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Council, a member may be removed by the Secretary upon a showing of adequate cause, if the Secretary determines that the person's continued service would be detrimental to the achievement of the purposes of the Act.

**§ 1208.36 Procedure.**

(a) Thirteen (13) Council members, including alternates acting in place of members of the Council, shall constitute a quorum: *Provided*, That such alternates shall serve only when the member is absent from a meeting or is disqualified. Any action of the Council shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In lieu of voting at an assembled meeting, and, when in the opinion of the chairperson of the Council such action is considered necessary, or for matters of an emergency nature when there is not enough time to call an assembled meeting, the Council may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, facsimile, or by other means of communication: *Provided*, That each member or alternate acting for a member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Council minutes.

**§ 1208.37 Executive committee.**

(a) The Council is authorized to appoint an executive committee of not more than nine persons from among its members. Initially, the executive committee shall be composed of the following:

(1) four members representing qualified wholesale handlers;

(2) two members representing producers that are qualified handlers;

(3) two members representing importers that are qualified handlers; and

(4) one member representing traditional retailers.

(b) After the initial appointments, each appointment to the executive committee shall be made so as to ensure that the committee reflects, to the maximum extent practicable, the membership composition of the Council as a whole.

(c) Each initial appointment to the executive committee shall be for a term of two years. After the initial appointments, each appointment to the executive committee shall be for a term of one year.

(d) The Council may delegate to the executive committee the authority of the Council under this subpart to hire and manage staff and conduct the routine business of the Council consistent with such policies as are determined by the Council.

**Activities of the Council**

**§ 1208.40 Duties of the Council.**

The Council shall have the following duties, in addition to the duties specified in other sections of this subpart:

(a) Administer this subpart in accordance with the terms and provisions of this subpart;

(b) Make rules and regulations to effectuate the terms and provisions of this subpart;

(c) Appoint members of the Council to serve on the executive committee, as provided in § 1208.37;

(d) Employ such persons as the Council determines are necessary, and set the compensation and define the duties of the persons;

(e) Develop budgets for the implementation of this subpart and submit the budgets to the Secretary for approval, and propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval plans and projects for cut flowers and greens promotion, consumer information, or related research;

(f) Implement plans and projects for cut flowers and greens promotion, consumer information, or related research, or contract or enter into agreements with appropriate persons to implement the plans and projects and pay the costs of the implementation of contracts and agreements with funds received under this subpart;

(g) Keep minutes, books, and records which clearly reflect all of the acts and transactions of the Council. Minutes of all meetings shall be promptly provided to the Secretary;

(h) Evaluate ongoing and completed plans and projects for cut flowers and greens promotion, consumer information, or related research;

(i) Receive, investigate, and report to the Secretary complaints of violations of this subpart and direct that the staff of the Council periodically review the list of importers of cut flowers and greens provided by the Customs Service to determine whether persons on the list are subject to this subpart;

(j) Recommend to the Secretary amendments to this subpart;

(k) Invest, pending disbursement under a plan or project, funds collected through assessments only in: Obligations of the United States or any agency of the United States, general obligations of any State or any political subdivision of a State, any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or obligations fully guaranteed as to principal and interest by the United States. Income from any such invested funds may be used only for a purpose for which the invested funds may be used.

(l) Prepare and submit to the Secretary such reports as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Council monthly, or at such times as prescribed by the Secretary.

Monthly financial statements shall be submitted to the Department and shall include at least:

(1) A balance sheet, and

(2) An expense budget comparison showing expenditures during the month, year-to-date expenditures, and an unexpended budget. Upon request, a summary of checks issued by the Council is to be made available. Reports shall be submitted within 30 days after the end of each month.

(m) To cause the books of the Council to be audited by an independent certified public accountant at the end of each fiscal period, and at such other times as the Council or the Secretary may deem necessary. The report of each audit shall show the receipt and expenditure of funds collected pursuant to this part, and shall be submitted to the Secretary.

(n) To give the Secretary the same notification, written or oral, as provided to Council members concerning all conference calls and meetings, including executive, advisory, subcommittee, and other meetings related to Council matters, and to grant the Secretary access to all such calls and meetings;

(o) To follow the Department's equal opportunity/civil rights policies; and

(p) Provide the Secretary such information as the Secretary may require.

**§ 1208.41 Budgets and expenses.**

(a) The Council shall promptly adopt and forward to the Secretary for approval its determination of the beginning and ending dates of an annual fiscal period to be used by the Council for budgeting and accounting purposes.

(b) The Council shall submit annual budgets of its anticipated expenses and disbursement in the administration of this subpart, including the projected costs for the promotion of cut flowers and greens, consumer information, and related research plans and projects to the Secretary for approval. The first budget, which shall be submitted promptly after the effective date of this subpart, shall cover such period as may remain before the beginning of the next fiscal year. If such fiscal period is 90 days or less, the first budget shall cover such period, as well as the next fiscal year. Thereafter, the Council shall submit budgets for each succeeding fiscal year not less than 30 days before the beginning of such fiscal year.

(c) The Council is authorized to incur such expenses (including provision for a reasonable reserve for operating contingencies) as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to § 1208.50, or other funds available to the Council.

(d) The Council shall reimburse the Secretary, from assessments collected pursuant to § 1208.50, or from other funds available to the Council, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after the effective date of this subpart.

(e) The Council shall establish an interest-bearing escrow account with a bank that is a member of the Federal Reserve System and shall deposit in such account an amount equal to the percentage determined by the Council to

be held in reserve for the payment of refunds pursuant to § 1208.55.

(f) The Council may, with the approval of the Secretary, borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

**§ 1208.42 Plans, projects, budgets, and contracts.**

The Council shall develop and implement plans and projects for the promotion of, and the dissemination of information about, cut flowers and greens, as well as for research related to cut flowers and greens in accordance with the following:

(a) The Council shall develop, or contract for the development of, plans and projects for advertising, sales promotion, other promotion, and for dissemination of consumer information, with respect to cut flowers and greens, and may disburse such funds as necessary for these purposes after such plans or projects have been submitted to, and approved by, the Secretary. Any such plan or project shall be directed toward increasing the general demand for cut flowers and greens and shall not make reference to a private brand or trade name, point of origin, or source of supply, except that the Council may offer such plans and projects of the Council for use by commercial parties such as local, regional, State, or national floral industry organizations, and then only under terms and conditions prescribed by the Council and approved by the Secretary. No plan or project may make use of unfair or deceptive acts or practices with respect to quality or value.

(b) The Council shall develop, or contract for the development of, plans and projects for research on the development of both established and new markets for cut flowers and greens and for research with respect to distribution, sale, marketing, use, and promotion of cut flowers and greens, as well as the dissemination of consumer information concerning cut flowers and greens. The Council is authorized to develop, or contract for the development of, such plans and projects for other research with respect to the marketing, promotion, and dissemination of information about cut flowers and greens as it finds appropriate. The Council may disburse such funds as necessary for these purposes after such plans or projects have been submitted to, and approved by, the Secretary.

(c) The Council shall submit to the Secretary, for approval before implementation, any contracts for development of plans and projects, as well as such plans and projects as may be developed by or approved by the Council for advertising, promotion, dissemination of information, and research. All such submissions to the Secretary shall be accompanied by a proposed budget showing the estimated expense to be incurred and the availability of revenue from which such expense may be paid. On approval of any such submission, the Council may proceed with the contract, plan or project and incur the expenses necessary to carry it out. Contracts or agreements to be submitted to the Secretary and entered into if approved by the Secretary shall, among such other matters as may be required, provide that:

(1) The contracting or agreeing party shall develop and submit to the Council a plan or project, together with a budget that includes the estimated costs to be incurred for the plan or project;

(2) the plan or project shall become effective on the approval of the Secretary; and

(3) the contracting or agreeing party shall:

(i) keep accurate records of all of the transactions of the party;

(ii) account for funds received and expenses;

(iii) make periodic reports to the Council of activities conducted; and

(iv) make such other reports as the Council or the Secretary may require.

(d) The Council, from time to time, may seek advice from and consult with experts from the production, import, wholesale, and retail segments of the cut flowers and greens industry to assist in the development of promotion, consumer information, and related research plans and projects. For these purposes, the Council may appoint special committees composed of persons other than Council members. A committee so appointed may not provide advice or recommendations to a representative of an agency, or an officer, of the Federal Government, and shall consult directly with the Council.

**§ 1208.43 Other contracts and agreements.**

The Council may enter into contracts or agreements for administrative services, including such contracts of employment, as may be required to conduct its business in accordance with such fiscal period budgets as may have been approved by the Secretary. To the extent appropriate to the contract involved, contracts entered into by the Council under the authority of this section shall contain provisions comparable to those described in § 1208.42(c).

**Assessments**

**§ 1208.50 Assessments.**

(a) Each qualified handler, as defined in § 1208.16—including but not limited to wholesale handlers, as defined in § 1208.16(a); bouquet manufacturers as described in § 1208.16(b); manufacturers of floral articles, as described in § 1208.16(c); auction houses that clear sales of cut flowers and greens, as described in § 1208.16(d); distribution centers owned or controlled by retailers if the principal business activity is floral sales, as described in § 1208.16(e); importers that are qualified handlers as defined in § 1208.16(f); producers that are qualified handlers as defined in § 1208.16(g)—shall pay to the Council an assessment in an amount determined in accordance with this subpart, on each sale of cut flowers and greens to a retailer or an exempt handler (as defined in § 1208.8) and on each non-sale transfer of cut flowers and greens to a retailer by a qualified handler that is a distribution center; as well as each direct sale of cut flowers and greens to a consumer by a producer that is a qualified handler, or by an importer that is a qualified handler. Such assessments shall be remitted by each qualified handler to the Council or its agent within 60 days after the end of the month in which the sale or non-sale transfer subject to assessment under this subpart took place. Such assessments shall be paid at the following rates:

(1) During the first three years after the effective date of this subpart:

(i) Except as provided in paragraph (a)(1)(ii) of this section, the rate shall be one-half of 1 (0.5) percent of the gross sales price of the cut flowers and greens sold;

(ii) In the case of non-sale transfers to a retailer by a qualified handler that is a distribution center and in the case of direct sales by importers or producers, the rate shall be one-half of 1 (0.5) percent of the amount of each transaction's valuation for assessment as provided in paragraph (b);

(2) After the first three years that this subpart is in effect, the uniform assessment rate may be increased or decreased annually by not more than one-quarter of 1 (0.25) percent of the gross sales price of a product sold; or in the case of other transactions the amount of such transactions, except that the assessment rate may not exceed 1 percent of the gross sales price or the transaction amount. Changes in the rate of assessment may only be made if such changes are adopted by a two-thirds majority vote of the Council and approved by the Secretary (after public notice and opportunity for comment as

provided in the Act) as being necessary to carry out the objectives of the Act. Any such change so approved by the Secretary may be put into effect without a referendum but shall be announced not less than 30 days prior to the beginning of a fiscal year.

(b) Each non-sale transfer of cut flowers and greens to a retailer from a qualified handler that is a distribution center shall be treated as a sale of cut flowers and greens to a retailer and shall be assessable. Each direct sale of cut flowers and greens to a consumer by a producer or an importer who is a qualified handler shall be assessable. These transactions shall be determined to have the following valuations for assessment purposes:

(1) In the case of a non-sale transfer of cut flowers and greens from a distribution center that is a qualified handler and each direct sale of cut flowers and greens to a consumer by an importer that is a qualified handler, the amount of the valuation of the cut flowers and greens for assessment purposes shall be the price paid by the distribution center or importer to acquire the cut flowers and greens, and determined by multiplying the acquisition price by a uniform factor of 1.43 to represent the markup of a wholesale handler on a sale to a retailer.

(2) In the case of a direct sale to a consumer by a producer who is a qualified handler, the valuation of the cut flowers and greens for assessment purposes shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform factor of 0.50 to represent the cost of producing the article and the markup of a wholesale handler on a sale to a retailer.

(3) The Council may consider and adopt changes in the uniform factors specified in subparagraphs (1) and (2) above. Any such change shall not become effective until it has been adopted by a majority vote of the Council and approved by the Secretary after public notice and opportunity to comment on such change as provided in the Act. Changes so adopted and approved shall become effective at the beginning of the next fiscal year.

(c) The collection of assessments shall commence on or after a date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be remitted, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments in an interest bearing account until the Council is constituted, and the funds may be transferred to the Council.

(d) No assessments may be levied on any sale of cut flowers and greens for export from the United States. The Council is authorized to establish procedures for the verification of exports.

(e) In general, assessment funds (less refunds, if any) shall be used:

(1) For payment of costs incurred in implementing and administering this subpart;

(2) To provide for a reasonable reserve to be maintained from assessments to be available for contingencies; and

(3) To cover the administrative costs incurred by the Secretary in implementing and administering this Act.

**§ 1208.51 Influencing governmental action.**

No funds collected by the Council shall in any manner be used for the purpose of influencing legislation or government action or policy, except to develop and recommend to the Secretary amendments to this subpart.

**§ 1208.52 Charges for late payments.**

Any assessment due the Council pursuant to § 1208.50 that is not paid on time shall be increased 1.5 percent each month it remains unpaid beginning with the day following the date such assessment was due. If not paid in full, any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a failure to submit a report when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Council shall be based on the applicable postmark date or the date actually received by the Council, whichever is earlier.

**§ 1208.53 Adjustment of accounts.**

Whenever the Council or the Secretary determines through an audit of a person's reports, records, books, or accounts or through some other means that additional money is due the Council or that money is due such person from the Council, such person shall be notified of the amount due. The person shall then remit any amount due the Council by the next date for remitting assessments. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

**§ 1208.54 Refunds of assessments and escrow account.**

(a) Any qualified handler may demand and receive from the escrow account, subject to the limitation on such payments provided in paragraph (c), a one-time refund of any assessments paid by or on behalf of the handler if the handler requests the refund before the initial referendum on this subpart is held and this subpart is rejected by the voters when it is submitted to the referendum in accordance with § 1208.60(a). Such a refund will be paid only if all of the following conditions are met:

(1) The handler has paid the assessments sought to be refunded and has submitted proof of such payment;

(2) The handler does not support the program established under this subpart and so states in the handler's demand for a refund;

(3) The handler's demand for a refund is made on a form specified by the Council and filed not less than 10 days prior to the date when the initial referendum, conducted pursuant to § 1208.60(a) to ascertain whether this subpart shall remain in effect, is scheduled to begin; and

(4) This subpart is not approved by a simple majority of the votes cast by qualified handlers in the initial referendum.

(b) The Council shall establish an escrow account to be used for assessment refunds, as needed, and shall place into the account an amount equal to 10 percent of the total amount of assessments collected during the period beginning on the date this subpart becomes effective and ending on the date the results of the initial referendum are issued and the initial referendum is completed.

(c) If the amount in the escrow account is not sufficient to refund the total amount of assessments demanded by all qualified handlers determined eligible for refunds and this subpart is not approved in the referendum, the Council shall prorate the amount of all such refunds among all eligible qualified handlers that demand the refund. If there is any amount in excess of the amount needed to pay refunds and expenses, it shall be returned pro rata to those who paid assessments. If this subpart is approved in the referendum, there shall be no refunds made, and all funds in the escrow account shall be returned to the Council for use by the Council in accordance with the other provisions of this subpart.

**§ 1208.55 Postponement of collections.**

(a) The Council may grant a postponement of the payment of an assessment under this subpart for any qualified handler that establishes that it is financially unable to make the payment. In order that a qualified handler that is financially unable to pay an assessment may have the opportunity to petition the Council to postpone payment of such an assessment, as provided in the Act, the Council shall develop forms and procedures for this purpose as expeditiously as possible and submit them to the Secretary for approval and issuance after notice and an opportunity for public comment thereon. Such procedures shall, among other things, require that the handler demonstrate the handler's inability to pay through the submission of an opinion prepared by an independent certified public accountant (at the handler's expense) and any other documentation specified therein to the effect that the handler is insolvent or will be unable to continue to operate if the handler is required to pay the assessment when due.

(b) The procedures for obtaining a postponement of payment to be developed by the Council for submission to the Secretary shall also include provisions with respect to the period of postponement, the conditions of payment that may be imposed and the basis, if any, on which further extensions of the time for payment will be granted so as to appropriately reflect the demonstrated needs of the qualified handler.

**§ 1208.56 Determinations.**

(a) The Council is authorized to make the determinations required by this subpart as to the status of persons as qualified handlers and exempt handlers including determinations of the status of persons as qualified wholesale handlers, distribution centers that are qualified handlers, producers that are qualified handlers, importers that are qualified handlers, as well as such other determinations of status and facts as may be required for the effective administration of this subpart. Based on such determinations, the Council from time to time shall publish lists of exempt handlers who are not required to pay assessments, and lists of qualified handlers who are required to pay assessments under this subpart.

(b) For the purpose of applying the $750,000 annual sales limitation to a specific person in order to determine the status of the person as a qualified handler or an exempt handler or to a specific facility in order to determine the status of the facility as an eligible separate facility for the purpose of referenda, the Council is authorized to determine the annual sales volume of a person or facility.

(c) Any such determination shall be based on the sales of cut flowers and greens by the person or facility during the most recently-completed calendar year, except that in the case of a new business or other operation for which complete data on sales during all or part of the most recently-completed calendar year are not available to the Council, the determination may be made using an alternative time period or other alternative procedures as the Council may find appropriate. In making such determinations, the Council is authorized to make attributions in accordance with the following rules and for the purpose of determining the annual sales volume of a person or a separate facility of a person, sales attributable to a person shall include:

(1) In the case of an individual, sales attributable to the spouse, children, grandchildren, parents, and grandparents of the person;

(2) In the case of a partnership or member of a partnership, sales attributable to the partnership and other partners of the partnership;

(3) In the case of an individual or a partnership, sales attributable to any corporation or other entity in which the individual or partnership owns more than 50 percent of the stock or (if the entity is not a corporation) that the individual or partnership controls; and

(4) In the case of a corporation, sales attributable to any corporate subsidiary or other corporation or entity in which the corporation owns more than 50 percent of the stock or (if the entity is not a corporation) that the corporation controls.

(d) The Council is also authorized to attribute any stock ownership interest as may be required to carry out this subpart. In doing so a stock ownership interest in the entity that is owned by the spouse, children, grandchildren, parents, grandparents, or partners of an individual, or by a partnership in which a person is a partner, or by a corporation more than 50 percent of the stock of which is owned by a person, shall be treated as owned by the individual or person.

(e) For the purpose of this subpart, the Council, with the approval of the Secretary, may require a person who sells cut flowers and greens to retailers to submit reports to the Council on annual sales by the person and on stock ownership.

**Suspension or Termination**

**§ 1208.60 Suspension and termination.**

If the Secretary finds that this subpart, or any provision of this subpart, obstructs or does not tend to effectuate the policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or the provision of this subpart under such terms as the Secretary determines are appropriate. Such termination or suspension shall not be considered an order within the meaning of such term in the Act.

**§ 1208.61 Proceedings after termination.**

(a) Upon the termination of this subpart, the Council shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the assets of the Council. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Council, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contract or agreement entered into by it under this subpart;

(3) Make refunds from the escrow account to those persons who applied for refunds of assessments paid and who are eligible to receive such refunds. Such refunds shall be made within 30 days after the referendum results are issued.

(4) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Council and of the trustees, to such persons as the Secretary may direct; and

(5) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Council or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry

information programs, plans, or projects authorized under this subpart.

**§ 1208.62 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation or rule issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such regulation or rule;

(b) Release or extinguish any violation of this subpart or any such regulation or rule; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

**Reports, Books, and Records**

**§ 1208.70 Books, records, reports, cost control, and audits of the Council.**

(a) The Council shall maintain the books and records that the Secretary may require to account for the receipt and disbursement of all funds entrusted to the Council in accordance with the provisions of this subpart, and shall prepare and submit to the Secretary, from time to time as prescribed by the Secretary, all reports that the Secretary may require.

(b) The Council shall, as soon as practicable after the effective date of this subpart and after consultation with the Secretary and other appropriate persons, implement a system of cost controls based on normally accepted business practices that will ensure that the annual budgets of the Council include only amounts for administrative expenses that cover the minimum administrative activities and personnel needed to properly administer and enforce this subpart, and conduct, supervise, and evaluate plans and projects under this subpart.

(c) The Council shall cause the books and records of the Council to be audited by an independent auditor that is a certified public accountant at the end of each fiscal year. All audits must be performed in accordance with either standards issued by the American Institute of Certified Public Accountants or by the General Accounting Office. A report of each audit shall be submitted to the Secretary.

**§ 1208.71 Reports, books, and records of persons subject to this subpart.**

(a) Each qualified handler shall prepare and file reports containing such information as may be required by the Council with the approval of the Secretary. Such information shall include:

(1) Data showing the volume of sales and non-sale transfers of cut flowers and greens made during the reporting period;

(2) The amount of the assessment on such sales or non-sale transfers; and

(3) Any other data that may be required by the Council with the approval of the Secretary.

(b) Each person subject to this subpart shall maintain and make available for inspection by agents of the Council and the Secretary such books and records as are determined by the Council with the approval of the Secretary, as necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

**§ 1208.72 Confidential treatment.**

(a) Information obtained from books, records, or reports required to be maintained or filed under the Act and this subpart shall be kept confidential by all persons, including agents and former agents of the Council, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Council members. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this paragraph shall be deemed to prohibit:

(1) The issuance of general statements, based upon the reports, of the number of persons subject to this subpart or statistical data collected from such reports, which statements do not identify the information furnished by any such persons, and

(2) The publication, by direction of the Secretary, of the name of any individual, group of individuals, partnership, corporation, association, cooperative, or other entity that has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart so violated.

(b) No information on how a person voted in a referendum conducted under the Act shall be made public.

**Miscellaneous**

**§ 1208.80 Right of the Secretary.**

All fiscal matters, programs or projects, by-laws, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

**§ 1208.81 Personal liability.**

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgement, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

**§ 1208.82 Patents, copyrights, inventions, publications, and product formulations.**

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Council under this subpart shall be the property of the United States Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations, inure to the benefit of the Council. Upon termination of this subpart, § 1208.62 shall apply to determine disposition of all such property.

**§ 1208.83 Amendments.**

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

**§ 1208.84 Separability.**

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

**§ 1208.85 OMB control numbers.**

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction

Act of 1980, Public Law 96–511, is OMB number 0581–0096, except Council member nominee information sheets are assigned OMB number 0505–0001.

**Proposal II**

2. Part 1208 is proposed to be added as set forth above, with the exception of § 1208.32, which would read as follows:

**§ 1208.32 Designation and appointment of retailer members and alternates.**

(a) Nominations for one of the traditional retailer members of the Council and that member's alternate shall be made by the American Floral Marketing Council (AFMC) or a successor entity.

(b) Nominations for one of the traditional retailer members of the Council and that member's alternate shall be made by the Florists' Transworld Delivery Association, which is the largest traditional retail florist organization and expends the largest amount of marketing funds in the industry, or a successor entity.

(c) Nominations for one of the traditional retailer members of the Council and that member's alternate shall be made by a coalition of traditional retail florist organizations defined as follows:

(1) For the purpose of nominating members to the Council, a traditional retail florist organization is defined as an organization, including its committees and/or subsidiaries, whose voting membership (i) exceeds 1,000, (ii) is comprised of more than 75 percent traditional cut flowers and greens retailers, and (iii) expends a portion of its annual revenue on marketing of fresh cut flowers and greens.

(2) For the purpose of nominating members to the Council, a traditional cut flowers and greens retailer is defined as a small business establishment operating from owned or leased premises and deriving 40 percent of its total volume of sales from the sale of fresh cut flowers and greens.

(d) No traditional retail florist organization, including AFMC, shall be eligible to submit nominees for more than one of the three Council retailer member positions.

**Proposal III**

3. Part 1208 is proposed to be added as set forth above, with the exception of §§ 1208.21 and 1208.22, which would read as follows:

**§ 1208.21 Traditional retailer.**

*Traditional retailer* means any retailer, as defined in § 1208.17, whose primary business is the sale of floral products, including fresh cut flowers and cut greens, or who has a specific department dedicated to the sale of floral products, including fresh cut flowers and cut greens.

**§ 1208.22 Traditional retail florist organization.**

*Traditional florist organization* means membership organizations of traditional retailers with activities and membership which are nationwide in scope.

Dated: June 22, 1994.

**Lon Hatamiya,**

*Administrator.*

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# Reader Aids

Federal Register

Vol. 59, No. 123

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## INFORMATION AND ASSISTANCE

### Federal Register

| | |
|---|---|
| Index, finding aids & general information | 202–523–5227 |
| Public inspection announcement line | 523–5215 |
| Corrections to published documents | 523–5237 |
| Document drafting information | 523–3187 |
| Machine readable documents | 523–3447 |

### Code of Federal Regulations

| | |
|---|---|
| Index, finding aids & general information | 523–5227 |
| Printing schedules | 523–3419 |

### Laws

| | |
|---|---|
| Public Laws Update Service (numbers, dates, etc.) | 523–6641 |
| Additional information | 523–5230 |

### Presidential Documents

| | |
|---|---|
| Executive orders and proclamations | 523–5230 |
| Public Papers of the Presidents | 523–5230 |
| Weekly Compilation of Presidential Documents | 523–5230 |

### The United States Government Manual

| | |
|---|---|
| General information | 523–5230 |

### Other Services

| | |
|---|---|
| Data base and machine readable specifications | 523–3447 |
| Guide to Record Retention Requirements | 523–3187 |
| Legal staff | 523–4534 |
| Privacy Act Compilation | 523–3187 |
| Public Laws Update Service (PLUS) | 523–6641 |
| TDD for the hearing impaired | 523–5229 |

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## FEDERAL REGISTER PAGES AND DATES, JUNE

28207–28458.....1
28459–28758.....2
28759–29184.....3
29185–29350.....6
29351–29534.....7
29535–29710.....8
29711–29936.....9
29937–30276.....10
30277–30500.....13
30501–30662.....14
30663–30862.....15
30863–31106.....16
31107–31502.....17
31503–31916.....20
31917–32074.....21
32075–32308.....22
32309–32646.....23
32647–32870.....24
32871–33192.....27
33193–33412.....28

## CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 3 CFR

**Proclamations:**
6695.....28459
6696.....28461
6697.....28463
6698.....28757
6699.....30663
6700.....30665
6701.....31101
6702.....32309
6703.....32643

**Administrative Orders:**
Presidential Determinations:
No. 94–24 of May 16, 1994.....28759
No. 94–26 of June 2, 1994.....31103
No. 94–27 of June 2, 1994.....31105
No. 94–28 of June 6, 1994.....31107

**Executive Orders:**
3406 (Revoked in part by PLO 7048).....29661
4257 (Revoked in part by PLO 7056).....29206
8248 (Superseded or revoked in part by EO 12919).....29525
10222 (Superseded or revoked by EO 12919).....29525
10480 (Superseded or revoked by EO 12919).....29525
10647 (Superseded or revoked by EO 12919).....29525
10789 (Amended by EO 12919).....29525
11179 (Superseded or revoked by EO 12919).....29525
11355 (Superseded or revoked by EO 12919).....29525
11790 (Amended by EO 12919).....29525
11912 (Superseded or revoked in part by EO 12919).....29525
12148 (Superseded or revoked in part by EO 12919).....29525
12521 (Superseded or revoked by EO 12919).....29525
12649 (Superseded or revoked by EO 12919).....29525
12773 (Superseded or revoked in part by EO 12919).....29525
12775 (See EO 12920 and 12922).....30501, 32645
12779 (See EO 12920 and 12922).....30501, 32645
12853 (See EO 12922).....32645
12864 (Amended by EO 12921).....30667
12872 (See EO 12922).....32645
12914 (See EO 12920 and 12922).....30501, 32645
12914 (See DOT notice of June 24).....32744
12917 (See EO 12920).....30501
12918 (See State Dept. notice of May 27).....28583
12919.....29525
12920 (See EO 12922).....30501, 32645
12921.....30667
12922.....32645

### 5 CFR

330.....32871
332.....32871
351.....32871
532.....30503
591.....29351
1201.....30863, 31109
1209.....31109
2100.....30669
Ch. XIV.....30503

**Proposed Rules:**
300.....30717, 32042
532.....30533
870.....31171
871.....31171
872.....31171
873.....31171
874.....31171
890.....31171
1320.....29738

### 7 CFR

2.....31917
51.....31503
271.....29711
272.....29711, 30864
273.....29711, 30864
275.....29711
276.....29711
278.....29711
279.....29711
658.....31110
723.....28207
801.....31505
911.....29535
915.....30866

916.....31118
917.....31118
922.....30672
923.....31917
926.....30872
932.....30873
944.....30866
1735.....29536
1753.....31120
1755.....30505, 31120
1980.....28465
**Proposed Rules:**
0.....32138
1.....32138
6.....28495
7.....32138
47.....32138
50.....32138
51.....32138
52.....32138
53.....32138
54.....32138
180.....32138
210.....30218
220.....30218
246.....29549
301.....31561
319.....29557
372.....28814
400.....30533
406.....30536
457.....30537
1208.....33400
1250.....31174
1530.....28286
1710.....28495
1726.....28924
1942.....30717
1948.....30717
1951.....30717
1980.....30717, 32660

**8 CFR**

103.....30516
**Proposed Rules:**
1.....29386
3.....29386
103.....29386
208.....29386
242.....29386

**9 CFR**

77.....29185, 31921
78.....31922
92.....28214, 29186, 31923
94.....28216, 28218
317.....30875
381.....30875
**Proposed Rules:**
53.....33214
71.....33214
82.....33214
91.....31956
92.....33214
94.....31957, 33214
161.....33214
202.....32138
391.....32940

**10 CFR**

2.....29187
40.....28220
**Proposed Rules:**
9.....30308
20.....30724
30.....32138
35.....30724
40.....32138
52.....29965
70.....32138
72.....28496, 32138

**11 CFR**

8.....32311

**12 CFR**

27.....31924
34.....29482
201.....29537
208.....28761
225.....29482
323.....29482
327.....29714
412.....31136
545.....29482
563.....29482
564.....29482
574.....28468
701.....29066
**Proposed Rules:**
26.....29740
203.....30310
304.....29965
327.....29965
333.....30316
362.....29559
366.....32661
563b.....29480, 29975
567.....30538, 32143
575.....29480, 29975
617.....31562

**13 CFR**

107.....28471
121.....28231

**14 CFR**

25.....28234, 28762, 29538, 32050
29.....32050
39.....28475, 28763, 29351, 29353, 29354, 29355, 29540, 30277, 30278, 30282, 30283, 30285, 30673, 31507, 31508, 31512, 31516, 31517, 32325, 32327, 32329, 32331, 32647, 32874, 32875, 32877, 32879, 32881, 32882
71.....28245, 28449, 28476, 28477, 28478, 29189, 29190, 29542, 29937, 29938, 29939, 29944, 29945, 29946, 29947, 29948, 29949, 30288, 30832, 31518, 32075, 32076
91.....29716, 32050
97.....28479, 30675, 30676, 30680
121.....32050
125.....32050
135.....32050
**Proposed Rules:**
Ch. I.....29210, 29561, 32668, 32941
13.....29880
16.....29800
27.....29976
29.....29976
39.....29210, 29212, 29391, 29744, 29745, 30543, 32144, 33233
71.....28498, 28499, 29213, 29215, 29562, 30832, 32146, 32669, 33235
91.....31098, 31886
135.....31886
189.....29934

**15 CFR**

770.....30682
771.....30682, 30684
773.....30684
775.....30682
779.....30684
785.....30684
786.....30684
799.....30684
**Proposed Rules:**
990.....32148

**16 CFR**

1014.....32077
1610.....33193
**Proposed Rules:**
423.....30733
600.....31176
803.....30545
1640.....30735

**17 CFR**

**Proposed Rules:**
1.....30885
240.....29393, 29398, 33236
249.....29393, 29398
270.....28286
402.....32155
404.....32155

**18 CFR**

161.....32885
250.....32884, 32885
284.....29716, 32885
**Proposed Rules:**
35.....28297
803.....29563
804.....29563
805.....29563

**19 CFR**

10.....30289
12.....31519, 32902
101.....30289
111.....30289
123.....30289
128.....30289
141.....30289
143.....30289
145.....30289
148.....30289
159.....30289
**Proposed Rules:**
141.....32942
177.....32942
191.....31177

**20 CFR**

200.....28764
404.....30389

**21 CFR**

5.....31138
16.....29950
73.....28765
101.....28480
131.....32078
176.....33194
178.....33195
270.....29950
341.....29172
346.....28766
347.....28767
510.....28768, 31138, 31139, 33196, 33197
520.....28768, 33196, 33198
522.....31139, 33197
524.....28768, 33196
529.....31139
558.....33196, 33198
821.....31138
1270.....29950
1308.....30832
**Proposed Rules:**
Ch. I.....29977
333.....31402
352.....29706
369.....31402
600.....28821
601.....28821
606.....28822
607.....28822
610.....28821
640.....28822
660.....28822
810.....30656, 32489
1301.....30555, 30738

**22 CFR**

123.....29950
124.....29950
126.....29950
220.....28769
222.....28769

**23 CFR**

657.....30392
658.....30392
660.....30296
710.....30302
712.....30302
713.....30302
720.....30302
1260.....30695

**24 CFR**

Ch. I.....33362
9.....31036
42.....29326
55.....33198
200.....31521
207.....28246, 31140
213.....28246, 31140
215.....29326, 32648
220.....28246
221.....28246, 29326, 31140
232.....28246
236.....29326, 32648
241.....28246
242.....28246, 31140
244.....28246
291.....29506
510.....29326
813.....32648
850.....29326
881.....29326
882.....29326
883.....29326
884.....29326
900.....29326
905.....31521, 31927
913.....32648
941.....29326, 31521
965.....31927
968.....30472, 31521
**Proposed Rules:**
880.....30557

881.....30557
883.....30557
884.....30557
886.....30557
888.....32492

**25 CFR**

**Proposed Rules:**
Ch. I.....33236
256.....30276

**26 CFR**

1.....30100, 32078, 32903, 32911, 33199
20.....30100
25.....30100
301.....29356, 29359
602.....29359, 30100, 32078
**Proposed Rules:**
1.....30180, 32160, 32670
20.....30180
25.....30180

**27 CFR**

70.....29366
**Proposed Rules:**
4.....30560
6.....29215
8.....29215
10.....29215
11.....29215

**28 CFR**

0.....29717
16.....29717
65.....30520
549.....31882
552.....30468
Proposed Rules:
16.....29747
35.....31808
36.....31808
37.....31808

**29 CFR**

0.....32610
70.....29900
1952.....32649
2619.....30698
2676.....30698
2509.....32606
**Proposed Rules:**
103.....28501
417.....31056
452.....30834
1910.....28594, 30389, 30560
1915.....30560
1917.....28594, 30389
1918.....28594, 30389
1926.....30560, 32943
1928.....30560
2609.....29661

**30 CFR**

756.....29719
906.....28248
914.....30875
916.....28769
**Proposed Rules:**
Ch. II.....28304, 32944
206.....32943
701.....28744
773.....28744
785.....28744
816.....28744
817.....28744
901.....28302
917.....28823
920.....32388
935.....29748
938.....33236

**31 CFR**

10.....31523
205.....28260
356.....28773
515.....31142
550.....31143

**32 CFR**

251.....29368
367.....29952
552.....31144
701.....29721
706.....32333, 32334
**Proposed Rules:**
241.....32670
701.....28304

**33 CFR**

100.....28775, 30523, 30832, 31529, 31530, 31531, 32650
117.....28776, 28778, 30524, 31931, 32652
165.....28262, 28263, 28778, 28780, 29368, 29369, 29370, 29371, 30523, 31532, 31533, 31534, 31535, 31536, 31537, 31932, 31933, 31933, 31934, 31935, 31936, 31937, 32652, 32654, 32655, 33200
167.....28499
209.....31146
**Proposed Rules:**
100.....29403, 31567
117.....28324, 29405, 29406
151.....31959
165.....28824, 30389

**34 CFR**

21.....32656
75.....30258, 32656
81.....32656
219.....32656
232.....32656
303.....32656
346.....32656
347.....32656
354.....32656
355.....32656
356.....32656
357.....32656
358.....32656
359.....32656
360.....32656
363.....32656
369.....32656
371.....32656
373.....32656
374.....32656
375.....32656
376.....32656
377.....32656
378.....32656
379.....32656
380.....32656
381.....32656
385.....32656
386.....31060
387.....32656
389.....32656
390.....32656
462.....32656
472.....32656
600.....32081, 32656
602.....32656
608.....32656
609.....32656
610.....32656
614.....32656
631.....32656
632.....32656
633.....32656
634.....32656
635.....32656
636.....32656
642.....32656
643.....32656
644.....32656
645.....32656
646.....32656
648.....32656
649.....32656
650.....32656
653.....32656
654.....32656
655.....32656
656.....32656
657.....32656
658.....32656
660.....32656
661.....32656
667.....32656
668.....32656
669.....32656
671.....32656
674.....32656
675.....32656
676.....32656
682.....32656, 32862, 32922, 33334
685.....32656
690.....32656
692.....32656
693.....32656
698.....32656
776.....32656
777.....32656
778.....32656
779.....32656
785.....32656
786.....32656
787.....32656
**Proposed Rules:**
Ch. VI.....28502
668.....32264
674.....32264
675.....32264
676.....32264

**36 CFR**

242.....28922, 29032, 32923
261.....31146
290.....31146
292.....30492
1191.....31676, 32751
1220.....28781
1252.....29191
1254.....29191
1260.....29191
**Proposed Rules:**
1.....31886
2.....31886
3.....31886
4.....31886
5.....31886
6.....31886
7.....31886

**37 CFR**

1.....32658
201.....33201
253.....33201
255.....33201
259.....33201

**38 CFR**

3.....29723, 32658
17.....28264
**Proposed Rules:**
21.....32671

**39 CFR**

111.....30701, 32335, 32336
233.....31154
241.....29724
946.....29372
953.....31538
**Proposed Rules**
Ch. I.....31178
111.....31178, 32165
262.....30739
266.....30739

**40 CFR**

9.....31306, 31540, 32082, 32339, 32340, 32341
51.....32343
52.....28785, 29730, 29731, 29732, 29953, 29956, 29957, 30302, 30702, 31154, 31544, 31548, 32343, 32353, 32354, 32355, 32360, 32362, 32365, 32370, 33202
60.....32340
61.....31157
63.....29196
79.....33042
81.....28326, 28480
89.....31306
144.....29958
170.....30264
180.....28482, 29543, 32083, 32084, 33204
260.....28484
261.....31551
264.....29958
268.....31551
270.....29372
271.....29734, 30525, 32377, 32489
272.....30528
280.....29958
281.....29201
302.....31551
372.....33205
710.....30652
721.....29202, 29203, 29204
763.....33208
799.....33184
**Proposed Rules:**
Ch. I.....29750, 32389
51.....33237
52.....28503, 29977, 30326, 30562, 30564, 30741, 30742, 31568, 31962, 32390, 32392, 32395, 32397, 33240
63.....29196, 29750, 32165
70.....31183
81.....29977, 30326, 32397
124.....28680
180.....29576, 30746, 30748,

30750, 32167, 32169, 32170, 32172, 32173, 33240
185 ..... 32172
260 ..... 31568
261 ..... 31568
262 ..... 31568
264 ..... 28504, 31568
265 ..... 28504, 31568
266 ..... 31964
268 ..... 31568
270 ..... 28504, 28680, 31568
271 ..... 28504
273 ..... 31568
280 ..... 30448
281 ..... 30448
300 ..... 30752, 32673
372 ..... 29252
435 ..... 31186
455 ..... 30753
721 ..... 29255, 29258
799 ..... 33187

**42 CFR**

405 ..... 32086
412 ..... 30389, 32378
489 ..... 32086
1003 ..... 32086

**Proposed Rules:**

50 ..... 33242
410 ..... 32754
412 ..... 31303
413 ..... 29578, 31303
414 ..... 32754
435 ..... 31569
436 ..... 31569
482 ..... 31303
485 ..... 31303
489 ..... 31303

**43 CFR**

1720 ..... 29205
2070 ..... 29205
2510 ..... 29205
4700 ..... 28275
8350 ..... 29205

**Proposed Rules:**

11 ..... 32175
426 ..... 33251

**Public Land Orders:**

1800 (Revoked in part by PLO 7062) ..... 28791
7048 ..... 29661
7056 ..... 29206
7057 ..... 28788
7058 ..... 28789
7059 ..... 28789
7060 ..... 28790
7061 ..... 29545
7062 ..... 28791
7063 ..... 29544

**Proposed Rules:**

3160 ..... 29407

**44 CFR**

64 ..... 30705
65 ..... 28484, 28485, 32127, 32128
67 ..... 32130

**Proposed Rules**

67 ..... 28505

**45 CFR**

46 ..... 28276
95 ..... 30707
205 ..... 30707
2525 ..... 30709
2526 ..... 30709
2527 ..... 30709
2528 ..... 30709
2529 ..... 30709

**Proposed Rules:**

94 ..... 33242
1607 ..... 30885

**46 CFR**

12 ..... 28791
16 ..... 28791

**Proposed Rules:**

40 ..... 29259
67 ..... 31580
154 ..... 29259
502 ..... 31584
540 ..... 30567

**47 CFR**

0 ..... 30984, 32131
1 ..... 30984, 31009, 32489
2 ..... 32830
15 ..... 32830
24 ..... 32830
61 ..... 32925
64 ..... 32925
69 ..... 32925
73 ..... 29272, 29273, 31161, 31162, 31552, 32133
74 ..... 31552
90 ..... 30304, 31557

**Proposed Rules:**

2 ..... 31966
22 ..... 30890, 31186
61 ..... 30754
64 ..... 30754
69 ..... 30754
73 ..... 29408, 30331, 30891, 32176, 32177, 32945

**48 CFR**

516 ..... 32383
533 ..... 29480
552 ..... 32383
1501 ..... 32133
1801 ..... 29960
1802 ..... 29960
1804 ..... 29960
1805 ..... 29960
1807 ..... 29960, 29962
1809 ..... 29960
1810 ..... 29962
1815 ..... 29960
1822 ..... 29960
1823 ..... 29960
1825 ..... 29960
1839 ..... 29960
1843 ..... 29963
1852 ..... 29960, 29963

**Proposed Rules:**

7 ..... 29696
10 ..... 29696
37 ..... 29696
211 ..... 31584, 33253
215 ..... 31189
227 ..... 31584, 33253
245 ..... 28327
252 ..... 28327, 31584, 33253
546 ..... 32405
552 ..... 32405
1601 ..... 28487
1602 ..... 28487
1609 ..... 28487
1615 ..... 28487
1632 ..... 28487
1642 ..... 28487
1646 ..... 28487
1652 ..... 28487
1831 ..... 33254
1852 ..... 33254

**49 CFR**

1 ..... 32134
107 ..... 30530, 32930
171 ..... 28487
172 ..... 28487, 30530, 31822
173 ..... 28487
174 ..... 28487
176 ..... 30530
178 ..... 28487
179 ..... 28487
195 ..... 29379, 33388
214 ..... 30879
541 ..... 31162
591 ..... 31558
592 ..... 31558
826 ..... 30531

**Proposed Rules:**

27 ..... 31818
37 ..... 31818
192 ..... 30567
194 ..... 30755, 32178
195 ..... 30567
571 ..... 30756
575 ..... 33254
1002 ..... 29586
1023 ..... 32178

**50 CFR**

14 ..... 33211
17 ..... 30254, 31094, 32932
100 ..... 28922, 29032
216 ..... 30305, 31165
217 ..... 29545
222 ..... 31094
226 ..... 28793, 30715
227 ..... 29545
229 ..... 31165
301 ..... 29207, 30307
625 ..... 28809, 29207
630 ..... 32136
638 ..... 32938
649 ..... 31938
651 ..... 32134
661 ..... 31170
663 ..... 29736
671 ..... 28276
672 ..... 28811, 29208, 29548, 33212
675 ..... 28811, 29208, 29737, 29964, 30307, 32385, 32386
676 ..... 28281
685 ..... 28499

**Proposed Rules:**

Ch. II ..... 28838
15 ..... 28826
17 ..... 28328, 28329, 28508, 29778, 31620, 31970, 32178, 32946
20 ..... 29700
22 ..... 30892
285 ..... 30896, 31621
630 ..... 29779
641 ..... 30389
642 ..... 28330
644 ..... 30903
671 ..... 28827
672 ..... 28827
675 ..... 28827
676 ..... 28827, 31189, 33272

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

**Last List June 21, 1994**

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